Official Journal of the European Union

C 305

English edition

Information and Notices

Volume 62

9 September 2019

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 4 July 2019 — European Commission v Federal Republic of Germany

(Case C-377/17) ([1])

(Failure of a Member State to fulfil obligations — Services in the internal market — Directive 2006/123/EC — Article 15 — Article 49 TFEU — Freedom of establishment — Fees of architects and engineers for planning services — Minimum and maximum tariffs)

(2019/C 305/02)

Language of the case: German

Parties

Applicant: European Commission (represented by: W. Mölls, L. Malferrari and H. Tserepa-Lacombe, acting as Agents)

Defendant: Federal Republic of Germany (represented initially by: T. Henze and D. Klebs, and subsequently by D. Klebs, acting as Agents)

Intervener in support of the defendant: Hungary (represented by: M.Z. Fehér, G. Koós and M.M. Tátrai, acting as Agents

Operative part of the judgment

The Court:

1. Declares that, by maintaining fixed tariffs for the planning services of architects and engineers, the Federal Republic of Germany failed to fulfil its obligations under Article 15(1), (2)(g) and (3) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.

2. Orders the Federal Republic of Germany to bear its own costs and to pay those incurred by the European Commission.

3. Orders Hungary to bear its own costs.

([1]) OJ C 269, 14.8.2017.

Judgment of the Court (Third Chamber) of 4 July 2019 (request for a preliminary ruling from the hof van beroep te Antwerpen — Belgium) — Criminal proceedings against Freddy Lucien Magdalena Kirschstein, Thierry Frans Adeline Kirschstein

(Case C-393/17) ([1])

(Reference for a preliminary ruling — Directive 2005/29/EC — Unfair commercial practices — Scope — Concept of 'commercial practices' — Directive 2006/123/EC — Services in the internal market — Criminal law — Authorisation schemes — Higher education — 'Master's' degree — Prohibition to confer certain degrees without authorisation)

(2019/C 305/03)

Language of the case: Dutch

Referring court

Hof van beroep te Antwerpen

Parties in the main proceedings

Freddy Lucien Magdalena Kirschstein, Thierry Frans Adeline Kirschstein

Intervener: Vlaamse Gemeenschap

Operative part of the judgment

1. Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') must be interpreted as not applying to national legislation, such as that at issue in the main proceedings, which provides for criminal penalties to be imposed on persons who, without prior authorisation from the competent authority, confer a 'master's' degree.

2. Article 1(5) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, read in conjunction with Articles 9 and 10 thereof, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which provides for criminal penalties to be imposed on persons who, without prior authorisation from the competent authority, confer a 'master's' degree, provided that the conditions to which the granting of an authorisation to confer that degree is subject are compatible with Article 10(2) of that directive, which it is for the national court to verify.

([1]) OJ C 300, 11.9.2017.

Judgment of the Court (Grand Chamber) of 8 July 2019 — European Commission v Kingdom of Belgium

(Case C-543/17) ([1])

(Failure of a Member State to fulfil obligations — Article 258 TFEU — Measures to reduce the cost of deploying high-speed electronic communications networks — Directive 2014/61/EU — No transposition and/or no notification of transposing measures — Article 260(3) TFEU — Application for an order to pay a daily penalty payment — Calculation of the amount of the penalty payment)

(2019/C 305/04)

Language of the case: French

Parties

Applicant: European Commission (represented by: J. Hottiaux, C. Cattabriga L. Nicolae, G. von Rintelen and R. Troosters, acting as Agents)

Defendant: Kingdom of Belgium (represented initially by: P. Cottin and by C. Pochet, J. Van Holm and L. Cornelis, and subsequently by P. Cottin and C. Pochet, acting as Agents, and by P. Vernet, S. Depré and M. Lambert de Rouvroit, avocats, A. Van Acker et M. N. Lollo, experts)

Interveners in support of the defendant: Federal Republic of Germany (represented initially by: T. Henze and S. Eisenberg, and subsequently by S. Eisenberg, acting as Agents), Republic of Estonia (represented by: N. Grünberg, acting as Agent), Ireland (represented by: M. Browne and G. Hodge and by A. Joyce, acting as Agents, and by G. Gilmore, Barrister at Law, and P. McGarry, Senior Counsel), Kingdom of Spain (represented initially by: A. Gavela Llopis and A. Rubio González, and subsequently by A. Rubio González, acting as Agents), French Republic (represented by: E. de Moustier, C. David, A. L. Desjonquères, I. Cohen, B. Fodda and D. Colas, acting as Agents), Italian Republic (represented by: G. Palmieri, acting as Agent, and by S. Fiorentino, avvocato dello Stato), Republic of Lithuania (represented initially by: G. Taluntytė and L. Bendoraitytė and by D. Kriaučiūnas, and subsequently by L. Bendoraitytė, acting as Agents), Hungary (represented by: M. Z. Fehér, G. Koós and Z. Wagner, acting as Agents), Republic of Austria (represented by: G. Hesse and C. Drexel, acting as Agents), Romania (represented by: C. Canțăr, R. I. Hațieganu and L. Lițu, acting as Agents)

Operative part of the judgment

The Court:

1. Declares that, by not having adopted the laws, regulations and administrative provisions necessary to comply with Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks on the expiry of the period prescribed in the reasoned opinion of 30 September 2016, as extended by the European Commission, and, a fortiori, by not having notified the Commission of such transposing measures, the Kingdom of Belgium failed to fulfil its obligations under Article 13 of that directive.

2. Declares that, by still not having adopted the provisions necessary to transpose Article 2(7) to (9) and (11), Article 4(5) and Article 8 of Directive 2014/61 into its national law by the time of the examination of the facts by the Court, and, a fortiori, not having notified the European Commission of such transposing measures, the Kingdom of Belgium partly persisted in its failure to fulfil its obligations.

3. Orders that if the failure to fulfil obligations established in point 2 has continued until the day of delivery of the present judgment the Kingdom of Belgium must, from that date, pay the European Commission a penalty payment of EUR 5 000 each day until it has complied with its obligations.

4. Orders the Kingdom of Belgium to pay the costs.

5. Orders the Federal Republic of Germany, the Republic of Estonia, Ireland, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Lithuania, Hungary, the Republic of Austria and Romania to bear their own costs.

([1]) OJ C 374, 6.11.2017.

Judgment of the Court (Second Chamber) of 4 July 2019 (request for a preliminary ruling from the Vilniaus apygardos administracinis teismas — Lithuania) — Baltic Media Alliance Ltd v Lietuvos radijo ir televizijos komisija

(Case C-622/17) ([1])

(Reference for a preliminary ruling — Freedom to provide services — Directive 2010/13/EU — Audiovisual media services — Television broadcasting — Article 3(1) and (2) — Freedom of reception and retransmission — Incitement to hatred on grounds of nationality — Measures taken by the receiving Member State — Temporary obligation for media service providers and other persons providing services relating to the distribution of television channels or programmes via the internet to distribute or retransmit a television channel in the territory of that Member State only in pay-to-view packages)

(2019/C 305/05)

Language of the case: Lithuanian

Referring court

Vilniaus apygardos administracinis teismas

Parties to the main proceedings

Applicant: Baltic Media Alliance Ltd

Defendant: Lietuvos radijo ir televizijos komisija

Operative part of the judgment

Article 3(1) and (2) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) must be interpreted as meaning that a public policy measure adopted by a Member State, consisting in an obligation for media service providers whose programmes are directed towards the territory of that Member State and for other persons providing consumers of that Member State with services relating to the distribution of television channels or programmes via the internet to distribute or retransmit in the territory of that Member State, for a period of 12 months, a television channel from another Member State only in pay-to-view packages, without however restricting the retransmission as such in the territory of the first Member State of the television programmes of that channel, is not covered by that provision.

([1]) OJ C 52, 12.2.2018.

Judgment of the Court (Second Chamber) of 4 July 2019 (request for a preliminary ruling from the Gerechtshof Den Haag — Netherlands) — Criminal proceedings against Tronex BV

(Case C-624/17) ([1])

(Reference for a preliminary ruling — Environment — Waste — Shipments — Regulation (EC) No 1013/2006 — Article 2(1) — Directive 2008/98/EC — Article 3(1) — Concepts of 'shipment of waste' and 'waste' — Consignment of goods initially intended for retail sale, returned by consumers or become redundant in the seller's product range)

(2019/C 305/06)

Language of the case: Dutch

Referring court

Gerechtshof Den Haag

Party in the main proceedings

Tronex BV

Operative part of the judgment

The shipment to a third country of a consignment of electrical and electronic appliances, such as those at issue in the main proceedings, which had been initially intended for retail sale but which were returned by the consumer or which, for various reasons, were sent back by the retailer to its supplier, is to be regarded as a 'shipment of waste' within the meaning of Article 1(1) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, read in conjunction with Article 2(1) thereof, and Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, where that consignment contains appliances the good working condition of which has not been previously ascertained or which are not adequately protected from transport damage. Such goods which have become redundant in the seller's product range and which are in their unopened original packaging, on the other hand, must not, without indications to the contrary, be regarded as waste.

([1]) OJ C 32, 29.1.2018.

Judgment of the Court (Fourth Chamber) of 3 July 2019 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — proceedings brought by Eurobolt BV

(Case C-644/17) ([1])

(Reference for a preliminary ruling — Article 267 TFEU — Right to an effective remedy — Extent of review by national courts of an act of the European Union — Regulation (EC) No 1225/2009 — Article 15(2) — Communication to the Member States, no later than 10 working days before the meeting of the Advisory Committee, of all relevant information — Concept of 'relevant information' — Essential procedural requirement — Implementing Regulation (EU) No 723/2011 — Extension of the anti-dumping duty imposed on imports of certain iron or steel fasteners originating in China to imports consigned from Malaysia — Validity)

(2019/C 305/07)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Eurobolt BV

Intervener: Staatssecretaris van Financiën

Operative part of the judgment

1. Article 267 TFEU must be interpreted as meaning that, in order to contest the validity of a piece of secondary EU legislation, an individual may rely before a national court or tribunal on complaints that could be put forward in the context of an action for annulment under Article 263 TFEU, including complaints alleging a failure to satisfy the conditions for adopting such a piece of legislation.

2. Article 267 TFEU, read in conjunction with Article 4(3) TEU, must be interpreted as meaning that a national court or tribunal is entitled, prior to bringing proceedings before the Court of Justice, to approach the EU institutions that have taken part in drawing up a piece of secondary EU legislation, the validity of which is being contested before that court or tribunal, in order to obtain specific information and evidence from those institutions which it considers essential in order to dispel all doubts which it may have as regards the validity of the EU act concerned and so that it may avoid referring a question to the Court of Justice for a preliminary ruling for the purpose of assessing the validity of that act.

3. Council Implementing Regulation (EU) No 723/2011 of 18 July 2011 extending the definitive anti-dumping duty imposed by Regulation (EC) No 91/2009 on imports of certain iron or steel fasteners originating in the People's Republic of China to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not, is invalid, inasmuch as it was adopted in breach of Article 15(2) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community.

([1]) OJ C 52, 12.2.2018.

Judgment of the Court (First Chamber) of 10 July 2019 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband eV v Amazon EU Sàrl

(Case C-649/17) ([1])

(Reference for a preliminary ruling — Consumer protection — Directive 2011/83/EU — Article 6(1)(c) — Information requirements for distance and off-premises contracts — Obligation, for a trader, to indicate its telephone number and its fax number 'where they are available' — Scope)

(2019/C 305/08)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant: Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband eV

Respondent: Amazon EU Sàrl

Operative part of the judgment

Article 6(1)(c) of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council must be interpreted as, firstly, precluding national legislation, such as that at issue in the main proceedings, which imposes on traders, before concluding a distance or off-premises contract referred to in Article 2(7) and (8) of that directive, to provide, in all circumstances, their telephone number. Secondly, that provision does not imply an obligation for traders to establish a telephone or fax line, or to create a new email address to allow consumers to contact them and requires that number, the fax number or their email address to be communicated only where those traders already have those means of communication with consumers;

Article 6(1)(c) of Directive 2011/83 must be interpreted as meaning that, although that provision requires traders to make available to consumers a means of communication capable of satisfying the criteria of direct and effective communication, it does not preclude those traders from providing other means of communication than those listed in that provision in order to satisfy those criteria.

(1) OJ C 112, 26.3.2018.

Judgment of the Court (Fourth Chamber) of 3 July 2019 — Viridis Pharmaceutical Ltd. v European Union Intellectual Property Office (EUIPO), Hecht-Pharma GmbH

(Case C-668/17 P) (1)

(Appeal — European Union trade mark — Revocation proceedings — Word mark Boswelan — No genuine use — Use of the mark in a clinical trial prior to filing an application for authorisation to place a medicinal product on the market — Proper reason for non-use — Concept)

(2019/C 305/09)

Language of the case: German

Parties

Appellant: Viridis Pharmaceutical Ltd. (represented by C. Spintig, S. Pietzcker and M. Prasse, Rechtsanwälte)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO) (represented by S. Hanne, acting as Agent), Hecht-Pharma GmbH (represented by J. Sachs and C. Sachs, Rechtsanwälte)

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Viridis Pharmaceutical Ltd to pay, in addition to its own costs, those incurred by the European Union Intellectual Property Office (EUIPO) and Hecht-Pharma GmbH.

(1) OJ C 83, 5.3.2018.

Judgment of the Court (Fifth Chamber) of 11 July 2019 (reference for a preliminary ruling from the Consiglio di Stato — Italy) — Telecom Italia SpA v Ministero dello Sviluppo Economico, Infrastrutture e telecomunicazioni per l'Italia SpA (Infratel Italia SpA)

(Case C-697/17) ([1])

(Reference for a preliminary ruling — Award of public supply and public works contracts — Directive 2014/24/EU — Article 28(2) — Restricted procedure — Economic operators admitted to submit a tender — Need for the pre-selected candidate and the candidate submitting the tender to be legally and factually identical — Principle of equal treatment of tenderers)

(2019/C 305/10)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Telecom Italia SpA

Defendants: Ministero dello Sviluppo Economico, Infrastrutture e telecomunicazioni per l'Italia SpA (Infratel Italia SpA)

Intervener: OpEn Fiber SpA

Operative part of the judgment

The first sentence of Article 28(2) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC must be interpreted, with regard to the requirement that the pre-selected operators and the operators submitting tenders be legally and factually identical, as not precluding, in the context of a restricted procedure for the award of a public procurement contract, a pre-selected candidate who agrees to merge with another pre-selected candidate under a merger agreement concluded between the pre-selection stage and the stage when tenders are submitted and performed after that submission stage from submitting a tender.

([1]) OJ C 112, 26.3.2018.

Judgment of the Court (Fourth Chamber) of 11 July 2019 (reference for a preliminary ruling from the Østre Landsret — Denmark) — proceedings brought by A

(Case C-716/17) ([1])

(Reference for a preliminary ruling — Freedom of movement for workers — Restrictions — Initiation of debt relief proceedings — Condition of residence — Whether permissible — Article 45 TFEU — Direct effect)

(2019/C 305/11)

Language of the case: Danish

Referring court

Østre Landsret

Party to the main proceedings

A

Operative part of the judgment

1. Article 45 TFEU must be interpreted as precluding a rule on jurisdiction laid down by the legislation of a Member State, such as the one at issue in the main proceedings, that makes a grant of debt relief subject to the condition that the debtor must have his domicile or residence in that Member State.

2. Article 45 TFEU must be interpreted as requiring the national court to disapply the residence condition laid down by a national rule on jurisdiction, such as that at issue in the main proceedings, irrespective of whether the debt relief proceedings, which are also laid down by that legislation, may potentially affect the debt claims of private creditors under that legislation.

([1]) OJ C 83, 5.3.2018.

Judgment of the Court (First Chamber) of 10 July 2019 (request for a preliminary ruling from the Bezirksgericht Villach — Austria) — Norbert Reitbauer and Others v Enrico Casamassima

(Case C-722/17) ([1])

(Reference for a preliminary ruling — Area of freedom, security and justice — Regulation (EU) No 1215/2012 — Jurisdiction in civil and commercial matters — Exclusive jurisdiction — Article 24(1) and (5) — Actions concerning rights in rem in immovable property and enforcement of judgments — Judicially ordered auction of a property — Opposition proceedings regarding the distribution of the proceeds from that auction)

(2019/C 305/12)

Language of the case: German

Referring court

Bezirksgericht Villach

Parties to the main proceedings

Applicants: Norbert Reitbauer, Dolinschek GmbH, B.T.S. Trendfloor Raumausstattungs-GmbH, Elektrounternehmen K. Maschke GmbH, Klaus Egger, Architekt DI Klaus Egger Ziviltechniker GmbH

Defendant: Enrico Casamassima

Operative part of the judgment

Article 24(1) and (5) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action brought by a pledgee challenging the distribution of the proceeds from a judicially ordered auction of a property and seeking, first, the finding that a competing debt has been extinguished by reason of a financial settlement and, second, that the pledge guaranteeing enforcement of that latter debt is unenforceable, does not come within the exclusive jurisdiction of the courts of the Member State where the property is situated or of the courts of the place of enforcement.

([1]) OJ C 268, 30.7.2018.

Judgment of the Court (First Chamber) of 10 July 2019 — VG, successor in title to Ms v European Commission

(Case C-19/18 P) ([1])

(Appeal — Action for damages against the European Commission — Decision of the Commission to put an end to a collaboration in connection with the Team Europe network — Compensation for the damage suffered — Plea of inadmissibility raised by the Commission — Whether the dispute is contractual or tortious)

(2019/C 305/13)

Language of the case: French

Parties

Appellant: VG, successor in title to Ms (represented by: L. Levi, avocate)

Other party to the proceedings: European Commission (represented by: I. Martínez del Peral, C. Ehrbar and B. Mongin, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders VG to pay the costs.

([1]) OJ C 83, 5.3.2018.

Judgment of the Court (First Chamber) of 10 July 2019 (request for a preliminary ruling from the Hessisches Finanzgericht — Germany) — Federal Express Corporation Deutsche Niederlassung v Hauptzollamt Frankfurt am Main

(Case C-26/18) ([1])

(Reference for a preliminary ruling — Customs Union — Regulation (EEC) No 2913/92 — Articles 202 and 203 — Customs duties on imports — Incurrence of a customs debt due to failure to comply with customs rules — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Article 2(1)(d) and Article 30 — Import VAT — Taxable event — Definition of 'importation' of goods — Requirement of entry of the goods into the economic network of the European Union — Transportation of those goods into a Member State other than the Member State in which the customs debt arose)

(2019/C 305/14)

Language of the case: German

Referring court

Hessisches Finanzgericht

Parties to the main proceedings

Applicant: Federal Express Corporation Deutsche Niederlassung

Defendant: Hauptzollamt Frankfurt am Main

Operative part of the judgment

Article 2(1)(d) and Article 30 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that, when goods are introduced into the territory of the European Union, it is not sufficient that those goods were the subject of a failure to comply with customs rules in a given Member State, which in that Member State gave rise to a customs debt on importation, in order to find that those goods entered into the economic network of the European Union in that Member State, where is it is established that those goods were transported into another Member State, their final destination, where they were consumed, the import VAT relating to those goods then arising only in that other Member State.

([1]) OJ C 152, 30.4.2018.

Judgment of the Court (Third Chamber) of 10 July 2019 — European Commission v NEX International Limited, formerly Icap plc, Icap Management Services Ltd, Icap New Zealand Ltd

(Case C-39/18 P) ([1])

(Appeal — Competition — Agreements, decisions and concerted practices — Japanese yen interest rate derivatives sector — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Liability of an undertaking for its role as facilitator of the cartel — Calculation of the fine — Obligation to state reasons)

(2019/C 305/15)

Language of the case: English

Parties

Appellant: European Commission (represented by: B. Mongin, M. Farley, T. Christoforou and V. Bottka, acting as Agents)

Other parties to the proceedings: NEX International Limited, formerly Icap plc, Icap Management Services Ltd, Icap New Zealand Ltd (represented by: C. Riis-Madsen, advokat, and by S. Frank, avocat)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders the European Commission to pay the costs.

([1]) OJ C 142, 23.4.2018.

Judgment of the Court (First Chamber) of 10 July 2019 (request for a preliminary ruling from the Østre Landsret — Denmark) — A v Udlændinge- og Integrationsministeriet

(Case C-89/18) ([1])

(Reference for a preliminary ruling — EEC-Turkey Association Agreement — Decision No 1/80 — Article 13 — Standstill clause — Family reunification of spouses — New restriction — Overriding reason in the public interest — Successful integration — Efficient management of migration flows — Proportionality)

(2019/C 305/16)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: A

Defendant: Udlændinge- og Integrationsministeriet

Operative part of the judgment

Article 13 of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963 by the Republic of Turkey, on the one hand, and by the Member States of the EEC and the Community, on the other hand, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963, must be interpreted as meaning that a national measure which makes family reunification between a Turkish worker legally resident in the Member State concerned and his spouse conditional upon their overall attachment to that Member State being greater than their overall attachment to a third country, constitutes a 'new restriction', within the meaning of that provision. Such a restriction is unjustified.

([1]) OJ C 142, 23.4.2018.

Judgment of the Court (Seventh Chamber) of 11 July 2019 — European Commission v Hellenic Republic

(Case C-91/18) ([1])

(Failure of a Member State to fulfil obligations — Excise duties on alcohol and alcoholic beverages — Article 110 TFEU — Directive 92/83/EEC — Directive 92/84/EEC — Regulation (EC) No 110/2008 — Application of a lower rate of duty to the manufacture of national products 'tsipouro' and 'tsikoudia')

(2019/C 305/17)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: A. Kyratsou and F. Tomat, acting as Agents)

Defendant: Hellenic Republic (represented by: M. Tassopoulou and D. Tsagkaraki, acting as Agents)

Operative part of the judgment

The Court:

1. Declares that

   — by adopting and maintaining in force legislation which applies a rate of excise duty 50 % below the standard national rate to tsipouro and tsikoudia manufactured by 'systematic distilleries', the Hellenic Republic has failed to fulfil its obligations under Articles 19 and 21 in conjunction with Article 23(2) of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages, and

   — by adopting and maintaining in force legislation which applies, on conditions laid down by that legislation, a much reduced rate of excise duty to tsipouro and tsikoudia manufactured by small 'occasional' distillers, the Hellenic Republic has failed to fulfil its obligations under Articles 19 and 21 in conjunction with Article 22(1) of Directive 92/83 and with Article 3(1) of Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages;

2. Orders the Hellenic Republic to pay the costs.

([1]) OJ C 142, 23.4.2018.

Judgment of the Court (Tenth Chamber) of 4 July 2019 — FTI Touristik GmbH v European Union Intellectual Property Office (EUIPO), Harald Prantner, Daniel Giersch

(Case C-99/18 P) ([1])

(Appeal — EU trade mark — Regulation (EC) No 207/2009 — Opposition proceedings — Article 8(1)(b) — Application for registration of the figurative mark including the word element 'Fl' — Opposition by the proprietor of the figurative mark including the word element 'fly.de' — Rejection — Similarity between the signs — Name in normal script in the European Union Trade Marks Bulletin — Likelihood of confusion)

(2019/C 305/18)

Language of the case: German

Parties

Appellant: FTI Touristik GmbH (represented by: A. Parr, Rechtsanwältin)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO) (represented by: D. Walicka and D. Botis, Agents), Harald Prantner, Daniel Giersch (represented by: S. Eble, Rechtsanwalt)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders FTI Touristik GmbH to bear its own costs and to pay those incurred by the Office of the European Union for Intellectual Property (EUIPO);

3. Orders Mr Harald Prantner and Mr Daniel Giersch to bear their own costs.

([1]) OJ C 182, 28.5.2018.

Judgment of the Court (Third Chamber) of 10 July 2019 (request for a preliminary ruling from the Rechtbank Noord-Nederland — Netherlands) — HQ, IP, legally represented by HQ, JO v Aegean Airlines SA

(Case C-163/18) ([1])

(Reference for a preliminary ruling — Air transport — Regulation (EC) No 261/2004 — Common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights — Flight cancellation — Assistance — Right to reimbursement of the cost of the air ticket by the air carrier — Article 8(2) — Package tour — Directive 90/314/EEC — Insolvency of the tour organiser)

(2019/C 305/19)

Language of the case: Dutch

Referring court

Rechtbank Noord-Nederland

Parties to the main proceedings

Applicants: HQ, IP, legally represented by HQ, JO

Defendant: Aegean Airlines SA

Operative part of the judgment

Article 8(2) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, must be interpreted as meaning that a passenger who, under Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, has the right to hold his tour organiser liable for reimbursement of the cost of his air ticket, can no longer claim reimbursement of the cost of that ticket from the air carrier, on the basis of that regulation, even where the tour organiser is financially incapable of reimbursing the cost of the ticket and has not taken any measures to guarantee such reimbursement.

([1]) OJ C 182, 28.5.2018.

Judgment of the Court (Tenth Chamber) of 11 July 2019 (requests for a preliminary ruling from the Consiglio di Stato — Italy) — Agrenergy Srl (C-180/18 and C-286/18), Fusignano Due Srl (C-287/18) v Ministero dello Sviluppo Economico

(Joined Cases C-180/18, C-286/18 and C-287/18) ([1])

(Reference for a preliminary ruling — Environment — Directive 2009/28/EC — Article 3(3)(a) — Promotion of the use of energy from renewable sources — Production of electricity by solar photovoltaic plants — Alteration of a support scheme — Principles of legal certainty and the protection of legitimate expectations)

(2019/C 305/20)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: Agrenergy Srl (C-180/18 and C-286/18), Fusignano Due Srl (C-287/18)

Respondent: Ministero dello Sviluppo Economico

Operative part of the judgment

Subject to verifications to be carried out by the referring court taking into account all the relevant factors, Article 3(3)(a) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, read in the light of the principles of legal certainty and the protection of legitimate expectations, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which allows a Member State to provide for the reduction, or even the removal, of incentive rates for energy produced by solar photovoltaic plants which were introduced previously.

([1]) OJ C 182, 28.5.2018.
OJ C 249, 16.7.2018.

Judgment of the Court (Eighth Chamber) of 10 July 2019 (request for a preliminary ruling from the Schienen-Control Kommission — Austria) — WESTbahn Management GmbH v ÖBB-Infrastruktur AG

(Case C-210/18) ([1])

(Reference for a preliminary ruling — Transport — Single European Railway Area — Directive 2012/34/EU — Article 3 — Concept of 'railway infrastructure' — Annex II — Minimum access — Inclusion of the use of passenger platforms)

(2019/C 305/21)

Language of the case: German

Referring court

Schienen-Control Kommission

Parties to the main proceedings

Applicant: WESTbahn Management GmbH

Defendant: ÖBB-Infrastruktur AG

Operative part of the judgment

Annex II to Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area must be interpreted as meaning that 'passenger platforms', referred to in Annex I to that directive, are an element of the railway infrastructure the use of which is part of the minimum access package, in accordance with point 1(c) of Annex II.

([1]) OJ C 231, 2.7.2018.

Judgment of the Court (First Chamber) of 3 July 2019 (request for a preliminary ruling from the Varhoven administrativen sad — Bulgaria) — 'UniCredit Leasing' EAD v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' — Sofia pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite (NAP)

(Case C-242/18) ([1])

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Taxable amount — Reduction — Principle of fiscal neutrality — Financial leasing agreement terminated for non-payment of lease instalments — Tax assessment notice — Scope — Taxable transactions — Supply of goods for consideration — Payment of 'compensation' for termination up to the end of the agreement — Jurisdiction of the Court of Justice)

(2019/C 305/22)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Appellant: 'UniCredit Leasing' EAD

Respondent: Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' — Sofia pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite (NAP)

Operative part of the judgment

1. Article 90(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as allowing, in the event of termination of a financial leasing agreement, a reduction in the taxable amount for value added tax established as a lump sum by way of a tax assessment notice on the basis of all the monthly leasing instalments due for the entire duration of the contract, even though that tax assessment notice has become effective and therefore constitutes a 'settled administrative act' establishing that there is outstanding tax liability under national law.

2. Article 90 of Directive 2006/112 must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, the failure to pay part of the leasing instalments due under a financial leasing agreement in respect of the period from the cessation of payments to the time of the non-retroactive termination of the agreement, on the one hand, and the failure to pay compensation due in the event of early termination of the agreement and corresponding to the amount of all the unpaid instalments up to the end of the term of the agreement, on the other hand, constitute a case of non-payment capable of being covered by the derogation from the requirement to reduce the taxable amount for value added tax, laid down in paragraph 2 of that article, unless the taxable person demonstrates a reasonable probability that the debt will not be honoured, this being a matter to be determined by the referring court.

([1]) OJ C 211, 18.6.2018.

Judgment of the Court (Eighth Chamber) of 10 July 2019 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Staatssecretaris van Financiën v CEVA Freight Holland BV

(Case C-249/18) ([1])

(Reference for a preliminary ruling — Customs code — Customs declaration — Incorrect indication of the subheading of the Combined Nomenclature — Tax adjustment notice — Article 78 of that code — Revision of the declaration — Adjustment of the transaction value — Article 221 of that code — Limitation period for the right to recover the customs debt — Interruption)

(2019/C 305/23)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Staatssecretaris van Financiën

Defendant: CEVA Freight Holland BV

Operative part of the judgment

1. Article 78 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000, must be interpreted as meaning that, when the declarant has the option to choose the price of the goods sold for export to the territory of the European Union as the valuation basis for the determination of their customs value and when it follows from a post-clearance inspection that the customs declaration which it made contains an error in the customs classification of the relevant goods leading to the application of a higher customs duty, the declarant may request, on the basis of that Article 78, the revision of that declaration for the purposes of obtaining a substitution of the initially indicated price by a lower transaction price in order to obtain a reduction in the amount of its customs debt.

2. Article 221(1) and (3) of Regulation No 2913/92, as amended by Regulation No 2700/2000, must be interpreted as meaning that it is for the Member States to determine, in compliance with the principles of effectiveness and equivalence, the date on which the debtor is to be informed of the amount of duty for the purposes of interrupting the three-year limitation period, at the end of which the customs debt is extinguished.

([1]) OJ C 276, 6.8.2018.

Judgment of the Court (Eighth Chamber) of 10 July 2019 (request for a preliminary ruling from the Augstākā tiesa — Latvia) — SIA 'Kuršu zeme' v Valsts ieņēmumu dienests

(Case C-273/18) ([1])

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Right to deduct input VAT — Article 168 — Goods supply chain — Refusal of the right to deduct on account of that chain's existence — Obligation on the competent tax authority to establish the existence of an abusive practice)

(2019/C 305/24)

Language of the case: Latvian

Referring court

Augstākā tiesa

Parties to the main proceedings

Appellant: SIA 'Kuršu zeme'

Respondent: Valsts ieņēmumu dienests

Operative part of the judgment

Article 168(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, must be interpreted as meaning that, for the purposes of refusing the right to deduct input value added tax (VAT), the fact that an acquisition of goods took place at the end of a chain of successive sale transactions between several persons and that the taxable person acquired possession of the goods concerned in the warehouse of a person forming part of that chain, other than the person mentioned as supplier on the invoice, is not in itself sufficient to find the existence of an abusive practice on the part of the taxable person or the other persons participating in that chain, the competent tax authority being required to establish the existence of an undue tax advantage obtained by that taxable person or those other persons.

([1]) OJ C 259, 23.7.2018.

Judgment of the Court (Seventh Chamber) of 11 July 2019 — European Commission v Italian Republic

(Case C-304/18) ([1])

(Failure of a Member State to fulfil obligations — Own resources — Customs duties — Finding of a customs debt — Inclusion in separate accounts — Obligation to make own resources available to the European Union — Recovery procedure initiated out of time — Default interest)

(2019/C 305/25)

Language of the case: Italian

Parties

Applicant: European Commission (represented initially by Z. Malůšková, M. Owsiany-Hornung and F. Tomat, and subsequently by Z. Malůšková and F. Tomat, acting as Agents)

Defendant: Italian Republic (represented by G. Palmieri, acting as Agent, and G. Albenzio, avvocato dello Stato)

Operative part of the judgment

The Court:

1. Declares that by refusing to make available traditional own resources amounting to EUR 2 120 309,50, referred to in the write-off notice IT(07)08-917, the Italian Republic has failed to fulfil its obligations under Article 8 of Council Decision 94/728/EC, Euratom of 31 October 1994, on the system of the European Communities' own resources, Article 8 of Council Decision 2000/597/EC, Euratom of 29 September 2000, on the system of the European Communities' own resources, Article 8 of Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the European Communities' own resources and Article 8 of Council Decision 2014/335/EU, Euratom of 26 May 2014 on the system of own resources of the European Union, and Articles 10, 11 and Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources, Articles 10, 11 and 17 Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, and Articles 10, 12 and 13 Council Regulation (EU, Euratom) No 609/2014 of 26 May 2014 on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirements;

2. Dismisses the remainder of the action;

3. Orders the Italian Republic to pay four fifths of the costs incurred by the European Commission and to bear its own costs;

4. Orders the European Commission to bear one fifth of its own costs.

([1]) OJ C 221, 25.6.2018.

Judgment of the Court (Eighth Chamber) of 3 July 2019 (request for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division) — United Kingdom) — Commissioners for Her Majesty's Revenue and Customs v The Chancellor, Masters and Scholars of the University of Cambridge

(Case C-316/18) ([1])

(Reference for a preliminary ruling — Value added tax (VAT) — Deduction of input tax — Management costs of an endowment fund that makes investments with the aim of financing the whole of the taxable person's output transactions — Overheads)

(2019/C 305/26)

Language of the case: English

Referring court

Court of Appeal (England & Wales) (Civil Division)

Parties to the main proceedings

Appellant: Commissioners for Her Majesty's Revenue and Customs

Respondent: The Chancellor, Masters and Scholars of the University of Cambridge

Operative part of the judgment

Article 168(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that a taxable person that (i) is carrying out both taxable and exempt activities, (ii) invests the donations and endowments that it receives by placing them in a fund and (iii) uses the income generated by that fund to cover the costs of all of those activities is not entitled to deduct, as an overhead, input value added tax paid in respect of the costs associated with that investment.

(1) OJ C 249, 16.7.2018.

Judgment of the Court (Eighth Chamber) of 10 July 2019 — Caviro Distillerie Srl, Distillerie Bonollo SpA, Distillerie Mazzari SpA, Industria Chimica Valenzana (ICV) SpA v European Commission

(Case C-345/18 P) (1)

(Appeal — Commercial policy — Dumping — Implementing Decision (EU) 2016/176 — Imports of tartaric acid originating in China and produced by Hangzhou Bioking Biochemical Engineering Co. Ltd — Regulation (EC) No 1225/2009 — Article 3(2), (3) and (5) — No material injury — Manifest error of assessment — Determination of injury — Evaluation of all relevant economic factors and indices having a bearing on the state of the EU industry — Market share)

(2019/C 305/27)

Language of the case: English

Parties

Appellants: Caviro Distillerie Srl, Distillerie Bonollo SpA, Distillerie Mazzari SpA, Industria Chimica Valenzana (ICV) SpA (represented by: R. MacLean, Solicitor)

Other party to the proceedings: European Commission (represented by: J.-F. Brakeland and A. Demeneix, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Caviro Distillerie Srl, Distillerie Bonollo SpA, Distillerie Mazzari SpA and Industria Chimica Valenzana (ICV) SpA to pay the costs.

(1) OJ C 259, 23.7.2018.

Judgment of the Court (Fifth Chamber) of 3 July 2019 (request for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Warszawie — Poland) — Delfarma sp. z o.o. v Prezes Urzędu Rejestracji Produktów Leczniczych, Wyrobów Medycznych i Produktów Biobójczych

(Case C-387/18) ([1])

(Reference for a preliminary ruling — Articles 34 and 36 TFEU — Free movement of goods — Measure having equivalent effect to a quantitative restriction — Protection of health and life of humans — Parallel import of medicinal products — Reference medicinal products and generic medicinal products — Requirement that the imported medicinal product and that which has been granted a marketing authorisation in the Member State of importation are both reference medicinal products or are both generic medicinal products)

(2019/C 305/28)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny w Warszawie

Parties to the main proceedings

Applicant: Delfarma sp. z o.o.

Defendant: Prezes Urzędu Rejestracji Produktów Leczniczych, Wyrobów Medycznych i Produktów Biobójczych

Operative part of the judgment

Articles 34 and 36 TFEU must be interpreted as precluding the legislation of a Member State, such as that at issue in the main proceedings, which requires, for the issue of a parallel import licence for a medicinal product, that that medicinal product and the medicinal product which has been granted a marketing authorisation in that Member State are both reference medicinal products or both generic medicinal products and which, therefore, prohibits the issue of any parallel import licence for a medicinal product where it is a generic medicinal product whereas the medicinal product previously authorised in that Member State is a reference medicinal product.

([1]) OJ C 294, 20.8.2018.

Judgment of the Court (First Chamber) of 10 July 2019 (request for a preliminary ruling from the Tribunal administratif — Luxembourg) — Nicolas Aubriet v Ministre de l'Enseignement supérieur et de la Recherche

(Case C-410/18) ([1])

(Reference for a preliminary ruling — Freedom of movement for persons — Equal treatment — Social advantages — Regulation (EU) No 492/2011 — Article 7(2) — Financial aid for higher education studies — Non-resident students — Condition connected with the period of their parents' working time on national territory — Minimum period of five years — Reference period of seven years — Method of calculation of the reference period — Date of the application for financial aid — Indirect discrimination — Justification — Proportionality)

(2019/C 305/29)

Language of the case: French

Referring court

Tribunal administratif

Parties to the main proceedings

Applicant: Nicolas Aubriet

Defendant: Ministre de l'Enseignement supérieur et de la Recherche

Operative part of the judgment

Article 45 TFEU and Article 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which makes the grant of financial aid for higher education studies to non-resident students subject to the condition that, at the date of the application for financial aid, one of the parents of the student has been employed or carried on an activity in that Member State for a period of at least five years in the course of a reference period of seven years calculated retroactively from the date of that application for financial aid, in so far as it does not permit the existence of any connection with the labour market of that Member State to be understood in a sufficiently broad manner.

([1]) OJ C 301, 27.8.2018.

Judgment of the Court (Seventh Chamber) of 11 July 2019 — Mykola Yanovych Azarov v Council of the European Union

(Case C-416/18 P) ([1])

(Appeal — Restrictive measures taken in view of the situation in Ukraine — Freezing of funds and economic resources — List of persons, entities and bodies covered by the freezing of funds and economic resources — Maintenance of the applicant's name — Decision by an authority of a third State — Council's obligation to verify that that decision was taken in accordance with the rights of the defence and the right to effective judicial protection)

(2019/C 305/30)

Language of the case: German

Parties

Appellant: Mykola Yanovych Azarov (represented by: A. Egger and G. Lansky, Rechtsanwälte)

Other party to the proceedings: Council of the European Union (represented by: J.-P. Hix and J. Bauerschmidt, acting as Agents)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 26 April 2018, Azarov v Council (T-190/16, not published, EU:T:2018:232);

2. Annuls Council Decision (CFSP) 2016/318 of 4 March 2016 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, and Council Implementing Regulation (EU) 2016/311 of 4 March 2016 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, in so far as they concern Mr Mykola Yanovych Azarov.

3. Orders the Council of the European Union to pay the costs incurred both in the proceedings at first instance and in the present appeal.

(1) OJ C 301, 27.8.2018.

Judgment of the Court (Ninth Chamber) of 11 July 2019 — European Commission v Italian Republic

(Case C-434/18) (1)

(Failure of a Member State to fulfil obligations — Directive 2011/70/Euratom — Responsible and safe management of spent fuel and radioactive waste — National programme — Obligation to submit to the European Commission)

(2019/C 305/31)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: initially G. Gattinara and M. Patakia, and subsequently G. Gattinara and R. Tricot, acting as Agents)

Defendant: Italian Republic (represented by: G. Palmieri, acting as Agent, and G. Palatiello, avvocato dello Stato)

Operative part of the judgment

The Court:

1. Declares that, by failing to notify the European Commission of its national programme for the implementation of spent fuel and radioactive waste management policy, the Italian Republic has failed to fulfil its obligations under Article 15(4), in conjunction with Article 13(1), of Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste;

2. Orders the Italian Republic to pay the costs.

(1) OJ C 285, 13.8.2018.

Judgment of the Court (Ninth Chamber) of 11 July 2019 (request for a preliminary ruling from the Městský soud v Praze — Czech Republic) — CS and Others v České aerolinie a.s.

(Case C-502/18) ([1])

(Reference for a preliminary ruling — Transport — Common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights — Regulation (EC) No 261/2004 — Article 5(1)(c) — Article 7(1) — Right to compensation — Connecting flights — Flights consisting of two flights operated by different air carriers — Long delay in relation to the second flight with points of departure and arrival outside the European Union and operated by a carrier established in a non-Member State)

(2019/C 305/32)

Language of the case: Czech

Referring court

Městský soud v Praze

Parties to the main proceedings

Applicants: CS, DR, EQ, FP, GO, HN, IM, JL, KK, LJ, MI

Defendant: České aerolinie a.s.

Operative part of the judgment

Article 5(1)(c) and Article 7(1) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, read together with Article 3(5) of Regulation No 261/2004, must be interpreted as meaning that, in the case of connecting flights, where there are two flights that are the subject of a single reservation, departing from an airport located within the territory of a Member State and travelling to an airport located in a non-Member State via the airport of another non-Member State, a passenger who suffers a delay in reaching his or her destination of 3 hours or more, the cause of that delay arising in the second flight, operated, under a code-share agreement, by a carrier established in a non-Member State, may bring his or her action for compensation under that regulation against the Community air carrier that performed the first flight.

([1]) OJ C 341, 24.9.2018.

Request for a preliminary ruling from the Krajský súd v Prešove (Slovakia) lodged on 25 June 2019 — LH v PROFI CREDIT Slovakia s.r.o.

(Case C-485/19)

(2019/C 305/33)

Language of the case: Slovak

Referring court

Krajský súd v Prešove

Parties to the main proceedings

Applicant: LH

Defendant: PROFI CREDIT Slovakia s.r.o.

Questions referred

A. 1. Must Article 47 of the Charter of Fundamental Rights of the European Union ('Article 47 of the Charter') and, by implication, the consumer's right to an effective legal remedy be interpreted as precluding national legislation, such as Article 107(2) of the Občianský zákonník (Civil Code of Slovakia) on the limitation of the consumer's right by a statutory three-year limitation period, in accordance with which the consumer's right to reimbursement which arises from an unfair contractual term may become time-barred even where the consumer is not in a position to evaluate the unfair contractual term and the limitation period starts even without the consumer being aware that the contractual term is unfair?

2. In the event that, despite a lack of awareness on the part of the consumer, the legislation which imposes an statutory limitation period of three years on the consumer's right is consistent with Article 47 of the Charter and the principle of effectiveness, the national court then asks the following:

Is a national practice contrary to Article 47 of the Charter and the principle of effectiveness if, in accordance with that practice, the **burden of proof** falls on the consumer, who must prove in legal proceedings that the persons acting on behalf of the creditor were **aware** of the fact that the creditor was infringing the consumer's rights, in the present case that awareness consisting in the knowledge that, by failing to indicate the precise annual percentage rate of charge (APR), the creditor was infringing a legal provision, and must also prove awareness of the fact that, in such circumstances, the loan was non-interest bearing and, by receiving payments of interest, the creditor obtained unjust enrichment?

3. In the event that question A.2 is answered in the negative, on the part of which persons, among the directors, the shareholders and the commercial representatives of the creditor, must the consumer prove awareness of the matters referred to in question A.2?

4. In the event that question A.2 is answered in the negative, what **degree** of awareness must be shown in order to **prove** the supplier's **intention** to infringe the relevant financial sector rules?

B. 1. Do the effects of the directives and the relevant case-law of the Court of Justice on the matter, including *DI*, C-441/14, EU:C:2016:278, *Pfeiffer*, C-397/01 to C-403/01, EU:C:2004:584, paragraphs 113 and 114, *Kücükdeveci*, C-555/07, EU:C:2010:21, paragraph 48, *Impact*, C-268/06, EU:C:2008:223, paragraph 100, *Dominguez*, C-282/10, paragraphs 25 and 27, and *Association de médiation sociale*, C-176/12, EU:C:2014:2, paragraph 38, preclude a national practice in accordance with which the national court reaches a conclusion concerning interpretation in conformity with EU law without employing interpretative methods and without giving due reasons?

2. If, after applying interpretative methods, such as purposive interpretation, authentic interpretation, historical interpretation, contextual interpretation, logical interpretation (the *a contrario* method, the *reductio ad absurdum* method) and after applying the whole body of domestic law, in order to secure the objectives referred to in Article 10(2)(h) and (i) of Directive 2008/48/EC [1] ('the Directive'), the national court concludes that interpretation in conformity with EU law results in a situation *contra legem*, is it then possible — for example, by making a comparison with relationships involving discrimination or the protection of employees — to accord the abovementioned provision of the Directive direct effect, in order to protect traders against consumers in credit relationships, and disapply the provision of law which is not in conformity with EU law?

[1] Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66).

Appeal brought on 17 July 2019 by ABLV Bank AS against the order of the General Court (Eighth Chamber) delivered on 6 May 2019 in Case T-281/18: ABLV Bank v European Central Bank (ECB)

(Case C-551/19 P)

(2019/C 305/34)

Language of the case: English

Parties

Appellant: ABLV Bank AS (represented by: O.H. Behrends, M. Kirchner, Rechtsanwälte)

Other party to the proceedings: European Central Bank (ECB)

Forms of order sought

The appellant claims that the Court should:

— set aside the order of the General Court of 6 May 2019 in case T-281/18;

— declare that the application for annulment is admissible;

— refer the case back to the General Court for it to determine the action for annulment; and

— order the ECB to pay the appellant's costs and the costs of the appeal.

Pleas in law and main arguments

The appellant puts forward two pleas in law in support of its appeal:

1) That the General Court erred in law and violated Art. 263 TFEU by failing to base its order on the decision which the ECB actually adopted.

2) That the order under appeal is based on an incorrect interpretation of Art. 18(1) SRMR ([1]).

([1]) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014, L 225, p. 1).

Appeal brought on 17 July 2019 by Ernests Bernis, Oļegs Fiļs, OF Holding SIA, Cassandra Holding Company SIA against the order of the General Court (Eighth Chamber) delivered on 6 May 2019 in Case T-283/18: Bernis e.a. v European Central Bank (ECB)

(Case C-552/19 P)

(2019/C 305/35)

Language of the case: English

Parties

Appellants: Ernests Bernis, Oļegs Fiļs, OF Holding SIA, Cassandra Holding Company SIA (represented by: O.H. Behrends, M. Kirchner, Rechtsanwälte)

Other party to the proceedings: European Central Bank (ECB)

Forms of order sought

The appellants claim that the Court should:

— set aside the order of the General Court of 6 May 2019 in case T-283/18;

— declare that the application for annulment is admissible;

— refer the case back to the General Court for it to determine the action for annulment; and

— order the ECB to pay the appellants' costs and the costs of the appeal.

Pleas in law and main arguments

The appellants put forward two pleas in law in support of their appeal:

1) That the General Court erred in law and violated Art. 263 TFEU by failing to base its order on the decision which the ECB actually adopted.

2) That the order under appeal is based on an incorrect interpretation of Art. 18(1) SRMR ([1]).

([1]) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014, L 225, p. 1).

Action brought on 26 July 2019 — European Commission v Italian Republic

(Case C-573/19)

(2019/C 305/36)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: G. Gattinara and E. Manhaeve, acting as Agents)

Defendant: Italian Republic

Form of order sought

The applicant claims that the Court should:

1. order that, because of the systematic and continuous failure to observe the annual limit values for NO_2 concentration

   — since 2010, and continuously, in zones IT0118 (agglomeration of Turin), IT0306 (agglomeration of Milan), IT0307 (agglomeration of Bergamo), IT0308 (agglomeration of Brescia), IT0309 (zone A — plain with a high level of urbanisation), IT0906 (agglomeration of Florence), IT0711 (Municipality of Genoa), IT1215 (agglomeration of Rome),

   — from 2010 to 2012 and then again since 2014, continuously, in zones IT1912 (agglomeration of Catania) and IT1914 (industrial land),

   a failure which persists, the Italian Republic has failed to meet its obligation under Article 13 of Directive 2008/50/EC on ambient air quality and cleaner air for Europe, [1] in conjunction with Annex XI thereto;

2. order that, by failing to adopt, as from 11 June 2010, appropriate measures to ensure compliance with the limit values for NO_2 concentration in the zones referred to in paragraph 1, the Italian Republic has systematically and continuously failed also to meet its obligations under Article 23(1) of Directive 2008/50, both on its own and in conjunction with Section A of Annex XV thereto, a failure which persists;

3. as a result, order the Italian Republic to pay the costs of the proceedings.

Pleas in law and main arguments

By its first plea in law, the Commission claims that the data collected regarding NO_2 concentration in the air demonstrate a systematic and continuous infringement of Article 13 of Directive 2008/50, in conjunction with Annex XI thereto. In accordance with those provisions, considered jointly, the level of concentration of those substances cannot exceed fixed annual limits. In certain zones, those limits have been exceeded continuously for more than ten years.

By its second plea in law, the Commission claims that the Italian Republic has failed to meet its obligations under Article 23(1) of Directive 2008/50, on its own and in conjunction with Section A of Annex XV thereto. In the first place, it submits, the air quality plans, adopted following the exceedance of the limit values for NO_2 concentration, do not make it possible to comply with those limit values or to limit the exceedance to the shortest period possible. In the second place, many of those plans do not contain the information required under Section A of Annex XV to the directive, the provision of that information being mandatory under the third subparagraph of Article 23(1) thereof.

[1] Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ 2008 L 152, p. 1).

GENERAL COURT

Judgment of the General Court of 12 July 2019 — Binca Seafoods v Commission

(Case T-94/15 RENV) ([1])

(Production and labelling of organic products — Regulation (EC) No 834/2007 — Amendments to Regulation (EC) No 889/2008 — Implementing Regulation (EU) No 1358/2014 — Prohibition of hormones — Non-renewal of the transitional period concerning aquaculture animals provided for in Article 95(11) of Regulation No 889/2008 — Methods of reproduction — Exceptional authorisation to collect wild aquaculture juveniles for on-growing purposes — Equal treatment)

(2019/C 305/37)

Language of the case: German

Parties

Applicant: Binca Seafoods GmbH (Munich, Germany) (represented by: H. Schmidt, lawyer)

Defendant: European Commission (represented by: A. Lewis, G. von Rintelen and K. Walkerová, Agents)

Re:

Application on the basis of Article 263 TFEU for annulment of Commission Implementing Regulation (EU) No 1358/2014 of 18 December 2014 amending Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 as regards the origin of organic aquaculture animals, aquaculture husbandry practices, feed for organic aquaculture animals and products and substances allowed for use in organic aquaculture (OJ 2014 L 365, p. 97).

Operative part of the judgment

1. *The action is dismissed.*

2. *Binca Seafoods GmbH is ordered to pay the costs relating to the proceedings before the General Court and before the Court of Justice.*

([1]) OJ C 155, 11.5.2015.

Judgment of the General Court of 11 July 2019 — Silver Plastics and Johannes Reifenhäuser v Commission

(Case T-582/15) ([1])

(Competition — Cartels — Retail food packaging market — Decision finding an infringement of Article 101 TFEU — Evidence of involvement in a cartel — Single and continuous infringement — Principle of equality of arms — 'Right to confront' — 2006 Leniency Notice — Significant added value — Attributability of unlawful conduct — 2006 Guidelines for calculating the amount of fines — Proportionality — Equal treatment — Upper limit of the fine)

(2019/C 305/38)

Language of the case: German

Parties

Applicants: Silver Plastics GmbH & Co. KG (Troisdorf, Germany) and Johannes Reifenhäuser Holding GmbH & Co. KG (Troisdorf) (represented initially by M. Wirtz, S. Möller and W. Carstensen, then by M. Wirtz, S. Möller and C. Karbaum, lawyers)

Defendant: European Commission (represented by A. Biolan, G. Meessen, I. Zaloguin and L. Wildpanner, acting as Agents)

Re:

Action under Article 263 TFEU seeking, principally, the annulment in part of Commission Decision C(2015) 4336 final of 24 June 2015 relating to proceedings under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39563 — Retail Food Packaging) and, in the alternative, the reduction of the fines imposed on the applicants.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Silver Plastics GmbH & Co. KG and Johannes Reifenhäuser Holding GmbH & Co. KG to pay the costs.*

([1]) OJ C 16, 18.1.2016.

Judgment of the General Court of 12 July 2019 — Sony and Sony Electronics v Commission

(Case T-762/15) ([1])

(Competition — Agreements, decisions and concerted practices — Market for optical disk drives — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Collusive agreements relating to bidding events concerning optical disk drives for notebook and desktop computers — Infringement by object — Rights of the defence — Obligation to state reasons — Principle of good administration — Fines — Single and continuous infringement — 2006 Guidelines on the method of setting fines)

(2019/C 305/39)

Language of the case: English

Parties

Applicants: Sony Corporation (Tokyo, Japan) and Sony Electronics (San Diego, California, United States) (represented by: R. Snelders, lawyer, N. Levy and E. Kelly, Solicitors)

Defendant: European Commission (represented initially by M. Farley, A. Biolan, C. Giolito, F. van Schaik and L. Wildpanner, and subsequently by M. Farley, F. van Schaik, L. Wildpanner and A. Dawes, Agents)

Re:

Action under Article 263 TFEU seeking, principally, annulment in part of Commission Decision C(2015) 7135 final of 21 October 2015 final relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39639 — Optical disk drives), or, in the alternative, a reduction of the amount of the fine imposed on the applicants.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Sony Corporation and Sony Electronics, Inc. to bear their own costs and pay the costs incurred by the European Commission.*

([1]) OJ C 98, 14.3.2016.

Judgment of the General Court of 12 July 2019 — Sony Optiarc and Sony Optiarc America v Commission

(Case T-763/15) ([1])

(Competition — Agreements, decisions and concerted practices — Market for optical disk drives — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Collusive agreements relating to bidding events concerning optical disk drives for notebook and desktop computers — Infringement by object — Rights of the defence — Obligation to state reasons — Principle of good administration — Fines — Single and continuous infringement — 2006 Guidelines on the method of setting fines)

(2019/C 305/40)

Language of the case: English

Parties

Applicants: Sony Optiarc, Inc. (Atsugi, Japan) and Sony Optiarc America, Inc. (San Jose, United States) (represented by: R. Snelders, lawyer, N. Levy and E. Kelly, Solicitors)

Defendant: European Commission (represented initially by: M. Farley, A. Biolan, C. Giolito, F. van Schaik and L. Wildpanner, and subsequently by M. Farley, F. van Schaik, L. Wildpanner and A. Dawes, acting as Agents)

Re:

Action under Article 263 TFEU seeking, principally, annulment in part of Commission Decision C(2015) 7135 final of 21 October 2015 final relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39639 — Optical disk drives), or, in the alternative, a reduction of the amount of the fine imposed on the applicants.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Sony Optiarc, Inc. and Sony Optiarc America, Inc. to bear their own costs and pay the costs incurred by the European Commission.*

([1]) OJ C 98, 14.3.2016.

Judgment of the General Court of 12 July 2019 — Quanta Storage v Commission

(Case T-772/15) ([1])

(Competition — Agreements, decisions and concerted practices — Market for optical disk drives — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Collusive agreements relating to bidding events concerning optical disk drives for notebook and desktop computers — Rights of the defence — Obligation to state reasons — Principle of good administration — Fines — Single and continuous infringement — 2006 Guidelines on the method of setting fines)

(2019/C 305/41)

Language of the case: English

Parties

Applicant: Quanta Storage, Inc. (Taoyuan, Taiwan) (represented by: O. Geiss, lawyer, B. Hartnett, Barrister, and W. Sparks, Solicitor)

Defendant: European Commission (represented by: C. Giolito and F. van Schaik, acting as Agents, and by C. Thomas, lawyer)

Re:

Action under Article 263 TFEU seeking, principally, annulment in part of Commission Decision C(2015) 7135 final of 21 October 2015 final relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39639 — Optical disk drives), or, in the alternative, a reduction of the amount of the fine imposed on the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Dismisses the European Commission's request that the amount of the fine of Quanta Storage, Inc. be increased;*

3. *Orders Quanta Storage to bear its own costs and to pay four fifths of the costs incurred by the Commission.*

([1]) OJ C 98, 14.3.2016.

Judgment of the General Court of 12 July 2019 — Hitachi-LG Data Storage and Hitachi-LG Data Storage Korea v Commission

(Case T-1/16) ([1])

(Competition — Agreements, decisions and concerted practices — Market for optical disk drives — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Collusive agreements relating to procurement events organised by two computer manufacturers — Unlimited jurisdiction — Infringement of the principle of good administration — Obligation to state reasons — Point 37 of the 2006 Guidelines on the method of setting fines — Particular circumstances — Error of law)

(2019/C 305/42)

Language of the case: English

Parties

Applicants: Hitachi-LG Data Storage, Inc. (Tokyo, Japan) and Hitachi-LG Data Storage Korea, Inc. (Seoul, South Korea) (represented by: L. Gyselen and N. Ersbøll, lawyers)

Defendant: European Commission (represented initially by: A. Biolan, M. Farley, C. Giolito and F. van Schaik, and subsequently by A. Biolan, M. Farley and F. van Schaik, acting as Agents)

Re:

Action under Article 263 TFEU seeking a reduction of the amount of the fine imposed by the European Commission on the applicants in its Decision C(2015) 7135 final of 21 October 2015 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39639 — Optical Disk Drives).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Hitachi-LG Data Storage, Inc. and Hitachi-LG Data Storage Korea, Inc. to bear their own costs and pay the costs incurred by the European Commission.*

([1]) OJ C 98, 14.3.2016.

Judgment of the General Court of 19 June 2019 — L'Oréal v EUIPO — Guinot (MASTER SMOKY)

(Case T-179/16 RENV) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark MASTER SMOKY — Earlier national figurative mark MASTERS COLORS PARIS — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001)

(2019/C 305/43)

Language of the case: French

Parties

Applicant: L'Oréal (Paris, France) (represented by: T. de Haan and P. Péters, lawyers)

Defendant: European Union Intellectual Property Office (represented by: D. Hanf, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Guinot (Paris, France) (represented by: A. Sion, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 23 February 2016 (Case R 2905/2014-5) relating to opposition proceedings between Guinot and L'Oréal.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders L'Oréal to pay the costs.*

([1]) OJ C 222, 20.6.2016.

Judgment of the General Court of 19 June 2019 — L'Oréal v EUIPO — Guinot (MASTER SHAPE)

(Case T-180/16 RENV) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark MASTER SHAPE — Earlier national figurative mark MASTERS COLORS PARIS — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001)

(2019/C 305/44)

Language of the case: French

Parties

Applicant: L'Oréal (Paris, France) (represented by: T. de Haan and P. Péters, lawyers)

Defendant: European Union Intellectual Property Office (represented by: D. Hanf, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Guinot (Paris, France) (represented by: A. Sion, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 23 February 2016 (Case R 2907/2014-5) relating to opposition proceedings between Guinot and L'Oréal.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders L'Oréal to pay the costs.*

([1]) OJ C 222, 20.6.2016.

Judgment of the General Court of 19 June 2019 — L'Oréal v EUIPO — Guinot (MASTER PRECISE)

(Case T-181/16 RENV) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark MASTER PRECISE — Earlier national figurative mark MASTERS COLORS PARIS — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001)

(2019/C 305/45)

Language of the case: French

Parties

Applicant: L'Oréal (Paris, France) (represented by: T. de Haan and P. Péters, lawyers)

Defendant: European Union Intellectual Property Office (represented by: D. Hanf, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Guinot (Paris, France) (represented by: A. Sion, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 23 February 2016 (Case R 2911/2014-5) relating to opposition proceedings between Guinot and L'Oréal.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders L'Oréal to pay the costs.*

([1]) OJ C 222, 20.6.2016.

Judgment of the General Court of 19 June 2019 — L'Oréal v EUIPO — Guinot (MASTER DUO)

(Case T-182/16 RENV) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark MASTER DUO — Earlier national figurative mark MASTERS COLORS PARIS — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001)

(2019/C 305/46)

Language of the case: French

Parties

Applicant: L'Oréal (Paris, France) (represented by: T. de Haan and P. Péters, lawyers)

Defendant: European Union Intellectual Property Office (represented by: D. Hanf, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Guinot (Paris, France) (represented by: A. Sion, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 23 February 2016 (Case R 2916/2014-5) relating to opposition proceedings between Guinot and L'Oréal.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders L'Oréal to pay the costs.*

([1]) OJ C 222, 20.6.2016.

Judgment of the General Court of 19 June 2019 — L'Oréal v EUIPO — Guinot (MASTER DRAMA)

(Case T-183/16 RENV) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark MASTER DRAMA — Earlier national figurative mark MASTERS COLORS PARIS — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001)

(2019/C 305/47)

Language of the case: French

Parties

Applicant: L'Oréal (Paris, France) (represented by: T. de Haan and P. Péters, lawyers)

Defendant: European Union Intellectual Property Office (represented by: D. Hanf, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Guinot (Paris, France) (represented by: A. Sion, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 23 February 2016 (Case R 2500/2014-5) relating to opposition proceedings between Guinot and L'Oréal.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders L'Oréal to pay the costs.*

([1]) OJ C 222, 20.6.2016.

Judgment of the General Court of 12 July 2019 — Keolis CIF and Others v Commission

(Case T-289/17) ([1])

(State aid — Aid scheme implemented by France between 1994 and 2008 — Investment subsidies granted by the Île-de-France region — Decision declaring the aid scheme compatible with the internal market — Concepts of 'existing aid' and of 'new aid' — Article 107 TFEU — Article 108 TFEU — Article 1(b)(i) and (v) of Regulation (EU) 2015/1589 — Limitation period — Article 17 of Regulation 2015/1589)

(2019/C 305/48)

Language of the case: French

Parties

Applicants: Keolis CIF (Le Mesnil-Amelot, France) and the seven other applicants whose names are set out in the annex to the judgment (represented by: R. Sermier and D. Epaud, lawyers)

Defendant: European Commission (represented by: L. Armati, C. Georgieva-Kecsmar and T. Maxian Rusche, Agents)

Re:

Application on the basis of Article 263 TFEU for partial annulment of Commission Decision (EU) 2017/1470 of 2 February 2017 on aid schemes SA.26763 2014/C (ex 2012/NN) implemented by France for bus transport undertakings in the Île-de-France region (OJ 2017 L 209, p. 24).

Operative part of the judgment

1. *The action is dismissed.*

2. *Keolis CIF and the other applicants whose names are set out in the annex are ordered to bear their own costs and to pay those incurred by the European Commission.*

([1]) OJ C 239, 24.7.2017.

Judgment of the General Court of 12 July 2019 — MAN Truck & Bus v EUIPO — Halla Holdings (MANDO)

(Case T-698/17) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark MANDO — Earlier international and national figurative marks MAN — Earlier national word mark Man — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2019/C 305/49)

Language of the case: English

Parties

Applicant: MAN Truck & Bus AG (Munich, Germany) (represented by: C. Röhl, lawyer)

Defendant: European Union Intellectual Property Office (represented initially by: J. Ivanauskas and D. Walicka, and subsequently by J. Ivanauskas and H. O'Neill, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Halla Holdings Corp. (Yongin-si, South Korea) (represented by: M.-R. Hirsch and C. de Haas, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 13 July 2017 (Case R 1919/2016-1), relating to opposition proceedings between MAN Truck & Bus and Halla Holdings.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 13 July 2017 (Case R 1919/2016-1) to the extent that it concluded that there was no likelihood of confusion between the word mark MANDO and the earlier international registration No 863 418 of the figurative mark MAN.*

2. *Dismisses the action as to the remainder.*

3. *Orders each party to bear its own costs.*

([1]) OJ C 437, 18.12.2017.

Judgment of the General Court of 12 July 2019 — Café del Mar and Others v EUIPO — Guiral Broto (Café del Mar)

(Case T-772/17) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark Café del Mar — Absolute ground for refusal — Bad faith — Article 52(1)(b) of Regulation (EC) No 207/2009 (now Article 59(1)(b) of Regulation (EU) 2017/1001))

(2019/C 305/50)

Language of the case: Spanish

Parties

Applicants: Café del Mar, SC (Sant Antoni de Portmany, Spain), José Les Viamonte (Sant Antoni de Portmany) and Carlos Andrea González (Sant Josep de sa Talaia, Spain) (represented by: F. Miazzetto and J. Gracia Albero, lawyers)

Defendant: European Union Intellectual Property Office (represented by: J. Crespo Carrillo, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Ramón Guiral Broto (Marbella, Spain) (represented by: J. de Castro Hermida, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 4 September 2017 (Case R 1540/2015-5), relating to invalidity proceedings between, on the one hand, Café del Mar, Mr Les Viamonte and Mr Andrea González and, on the other, Mr Guiral Broto.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 4 September 2017 (Case R 1540/2015-5).*

2. *Orders EUIPO to bear its own costs and to pay those incurred by Café del Mar SC, Mr José Les Viamonte and Mr Carlos Andrea González in the proceedings before the General Court.*

3. *Orders Mr Ramón Guiral Broto to bear his own costs and to pay those incurred by Café del Mar, Mr Les Viamonte and Mr Andrea González in the proceedings before the Board of Appeal.*

([1]) OJ C 22, 22.1.2018.

Judgment of the General Court of 12 July 2019 — Café del Mar and Others v EUIPO — Guiral Broto (Café del Mar)

(Case T-773/17) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark Café del Mar — Absolute ground for refusal — Bad faith — Article 52(1)(b) of Regulation (EC) No 207/2009 (now Article 59(1)(b) of Regulation (EU) 2017/1001))

(2019/C 305/51)

Language of the case: Spanish

Parties

Applicants: Café del Mar, SC (Sant Antoni de Portmany, Spain), José Les Viamonte (Sant Antoni de Portmany) and Carlos Andrea González (Sant Josep de sa Talaia, Spain) (represented by: F. Miazzetto and J. Gracia Albero, lawyers)

Defendant: European Union Intellectual Property Office (represented by: J. Crespo Carrillo, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Ramón Guiral Broto (Marbella, Spain) (represented by: J. de Castro Hermida, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 4 September 2017 (Case R 1542/2015-5), relating to invalidity proceedings between, on the one hand, Café del Mar, Mr Les Viamonte and Mr Andrea González and, on the other, Mr Guiral Broto.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 4 September 2017 (Case R 1542/2015-5).*

2. *Orders EUIPO to bear its own costs and to pay those incurred by Café del Mar SC, Mr José Les Viamonte and Mr Carlos Andrea González in the proceedings before the General Court.*

3. *Orders Mr Ramón Guiral Broto to bear his own costs and to pay those incurred by Café del Mar, Mr Les Viamonte and Mr Andrea González in the proceedings before the Board of Appeal.*

([1]) OJ C 22, 22.1.2018.

Judgment of the General Court of 12 July 2019 — Café del Mar and Others v EUIPO — Guiral Broto (C del M)

(Case T-774/17) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark C del M — Absolute ground for refusal — Bad faith — Article 52(1)(b) of Regulation (EC) No 207/2009 (now Article 59(1)(b) of Regulation (EU) 2017/1001))

(2019/C 305/52)

Language of the case: Spanish

Parties

Applicants: Café del Mar, SC (Sant Antoni de Portmany, Spain), José Les Viamonte (Sant Antoni de Portmany) and Carlos Andrea González (Sant Josep de sa Talaia, Spain) (represented by: F. Miazzetto and J. Gracia Albero, lawyers)

Defendant: European Union Intellectual Property Office (represented by: J. Crespo Carrillo, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Ramón Guiral Broto (Marbella, Spain) (represented by: J. de Castro Hermida, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 4 September 2017 (Case R 1618/2015-5), relating to invalidity proceedings between, on the one hand, Café del Mar, Mr Les Viamonte and Mr Andrea González and, on the other, Mr Guiral Broto.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 4 September 2017 (Case R 1618/2015-5).*

2. *Orders EUIPO to bear its own costs and to pay those incurred by Café del Mar SC, Mr José Les Viamonte and Mr Carlos Andrea González in the proceedings before the General Court.*

3. *Orders Mr Ramón Guiral Broto to bear his own costs and to pay those incurred by Café del Mar, Mr Les Viamonte and Mr Andrea González in the proceedings before the Board of Appeal.*

([1]) OJ C 22, 22.1.2018.

Judgment of the General Court of 12 July 2019 — MAN Truck & Bus v EUIPO — Halla Holdings (MANDO)

(Case T-792/17) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark MANDO — Earlier international and national figurative marks MAN — Earlier national word mark Man — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2019/C 305/53)

Language of the case: English

Parties

Applicant: MAN Truck & Bus AG (Munich, Germany) (represented by: C. Röhl, lawyer)

Defendant: European Union Intellectual Property Office (represented initially by: J. Ivanauskas and D. Walicka, and subsequently by J. Ivanauskas and H. O'Neill, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Halla Holdings Corp. (Yongin-si, South Korea) (represented by: M.-R. Hirsch and C. de Haas, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 14 September 2017 (Case R 1677/2016-1), relating to opposition proceedings between MAN Truck & Bus and Halla Holdings.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 14 September 2017 (Case R 1677/2016-1) to the extent that it concluded that there was no likelihood of confusion between the figurative mark MANDO and the earlier international registration No 863 418 of the figurative mark MAN.*

2. *Dismisses the action as to the remainder.*

3. *Orders each party to bear its own costs.*

([1]) OJ C 42, 5.2.2018.

Judgment of the General Court of 12 July 2019 — Fashion Energy v EUIPO — Retail Royalty (1st AMERICAN)

(Case T-54/18) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark 1st AMERICAN — Earlier EU figurative mark representing an eagle — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001 — Audi alteram partem rule — Article 95(1) of Regulation 2017/1001 — Cross claim)

(2019/C 305/54)

Language of the case: English

Parties

Applicant: Fashion Energy Srl (Milan, Italy) (represented by: T. Müller and F. Togo, lawyers)

Defendant: European Union Intellectual Property Office (represented by: L. Rampini and H. O'Neill, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Retail Royalty Co. (Las Vegas, Nevada, USA) (represented by: M. Dick, Solicitor, and J. Bogatz, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 15 November 2017 (Case R 693/2017-2), relating to opposition proceedings between Retail Royalty and Fashion Energy.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 15 November 2017 (Case R 693/2017-2);*

2. *Dismisses the cross-claim as inadmissible;*

3. *In the main appeal, EUIPO and Retail Royalty Co. are ordered to bear their own costs and to each bear half of the costs incurred by Fashion Energy Srl.*

4. *In the cross-claim, Retail Royalty is ordered to bear its own costs and those incurred by Fashion Energy and EUIPO.*

([1]) OJ C 123, 9.4.2018.

Judgment of the General Court of 12 July 2019 — Miles-Bramwell Executive Services v EUIPO (FREE)

(Case T-113/18) ([1])

(EU trade mark — Application for EU word mark FREE — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EU) 2017/1001)

(2019/C 305/55)

Language of the case: English

Parties

Applicant: Miles-Bramwell Executive Services Ltd (Alfreton, United Kingdom) (represented initially by: J. Mellor QC, G. Parsons and A. Zapalowski, Solicitors, and subsequently by J. Mellor, G. Parsons and F. McConnell, Solicitors)

Defendant: European Union Intellectual Property Office (represented by: A. Folliard-Monguiral and H. O'Neill, acting as Agents)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 27 November 2017 (Case R 2164/2016-1), relating to an application for registration of the word sign FREE as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Miles-Bramwell Executive Services Ltd to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO).*

([1]) OJ C 152, 30.4.2018.

Judgment of the General Court of 12 July 2019 — Miles-Bramwell Executive Services v EUIPO (FREE)

(Case T-114/18) ([1])

(EU trade mark — Application for EU word mark FREE — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EU) 2017/1001)

(2019/C 305/56)

Language of the case: English

Parties

Applicant: Miles-Bramwell Executive Services Ltd (Alfreton, United Kingdom) (represented initially by: J. Mellor QC, G. Parsons and A. Zapalowski, Solicitors, and subsequently by J. Mellor, G. Parsons and F. McConnell, Solicitors)

Defendant: European Union Intellectual Property Office (represented by: A. Folliard-Monguiral and H. O'Neill, acting as Agents)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 27 November 2017 (Case R 2166/2016-1), relating to an application for registration of the word sign FREE as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Miles-Bramwell Executive Services Ltd to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO).*

([1]) OJ C 152, 30.4.2018.

Judgment of the General Court of 26 June 2019 — Agencja Wydawnicza Technopol v EUIPO (200 PANORAMICZNYCH)

(Joined Cases T-117/18 to T-121/18) ([1])

(EU trade mark — Applications for the EU word marks 200 PANORAMICZNYCH, 300 PANORAMICZNYCH, 400 PANORAMICZNYCH, 500 PANORAMICZNYCH and 1000 PANORAMICZNYCH — Absolute grounds for refusal — Descriptiveness — Article 7(1)(c) of Regulation (EU) 2017/1001 — No distinctive character acquired through use — Article 7(3) of Regulation 2017/1001 — No misuse of powers)

(2019/C 305/57)

Language of the case: Polish

Parties

Applicant: Agencja Wydawnicza Technopol sp. z o.o. (Częstochowa, Poland) (represented by: C. Rogula, lawyer)

Defendant: European Union Intellectual Property Office (represented by: D. Walicka, acting as Agent)

Re:

Actions brought against five decisions of the Fifth Board of Appeal of EUIPO of 15 December 2017 (Cases R 2194/2016-5, R 2195/2016-5, R 2200/2016-5, R 2201/2016-5 and R 2208/2016-5), regarding applications for registration of the word signs 200 PANORAMICZNYCH, 300 PANORAMICZNYCH, 400 PANORAMICZNYCH, 500 PANORAMICZNYCH and 1000 PANORAMICZNYCH as EU trade marks.

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders Agencja Wydawnicza Technopol sp. z o.o. to pay the costs, including those incurred by the European Union Intellectual Property Office (EUIPO).*

([1]) OJ C 142, 23.4.2018.

Judgment of the General Court of 12 July 2019 — Gruppo Armonie v EUIPO (mo·da)

(Case T-264/18) ([1])

(EU trade mark — Application for EU figurative mark mo·da — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EU) 2017/1001 — Absolute ground for refusal in part of the European Union — Article 7(2) of Regulation 2017/1001 — No distinctive character acquired through use — Article 7(3) of Regulation 2017/1001)

(2019/C 305/58)

Language of the case: Italian

Parties

Applicant: Gruppo Armonie SpA (Casalgrande, Italy) (represented by G. Medri, lawyer)

Defendant: European Union Intellectual Property Office (represented by L. Rampini, acting as Agent)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 20 February 2018 (Case R 2065/2017-5) relating to an application for registration of the figurative sign mo·da as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Gruppo Armonie SpA to pay the costs.*

([1]) OJ C 221, 25.6.2018.

Judgment of the General Court of 27 June 2019 — Sandrone v EUIPO — J. Garcia Carrion (Luciano Sandrone)

(Case T-268/18) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark Luciano Sandrone — Earlier EU word mark DON LUCIANO — Genuine use of the earlier mark — Article 47(2) and (3) of Regulation (EU) 2017/1001 — Relative ground for refusal — Article 8(1)(b) of Regulation 2017/1001 — Application for an EU word mark consisting of a first name and of a surname — Earlier mark consisting of an honorific title and a first name — Neutrality of the conceptual comparison — No likelihood of confusion)

(2019/C 305/59)

Language of the case: English

Parties

Applicant: Luciano Sandrone (Barolo, Italy) (represented by: A. Borra, lawyer)

Defendant: European Union Intellectual Property Office (represented by: K. Kompari and H. O'Neill, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO: J. García Carrión, SA (Jumilla, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 26 February 2018 (Case R 1207/2017-2), relating to opposition proceedings between J. García Carrión and Luciano Sandrone.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 26 February 2018 (Case R 1207/2017-2);*

2. *Orders EUIPO to bear its own costs and to pay those incurred by Mr Luciano Sandrone.*

([1]) OJ C 231, 2.7.2018.

Judgment of the General Court of 27 June 2019 — Aldi v EUIPO — Crone (CRONE)

(Case T-385/18) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark CRONE — Earlier EU figurative marks crane and earlier word mark CRANE — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2019/C 305/60)

Language of the case: German

Parties

Applicant: Aldi GmbH & Co. KG (Mülheim an der Ruhr, Germany) (represented by: N. Lützenrath, U. Rademacher, C. Fürsen and M. Minkner, lawyers)

Defendant: European Union Intellectual Property Office (represented by: A. Crawcour and D. Hanf, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Christoph Michael Crone (Krefeld, Germany) (represented by: M. van Maele and H.-Y. Cho, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 14 March 2018 (Case R 1100/2017-1), relating to opposition proceedings between Aldi and Mr Crone.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Aldi GmbH & Co. KG to pay the costs.*

([1]) OJ C 285, 13.8.2018.

Judgment of the General Court of 20 June 2019 — Nonnemacher v EUIPO — Ingram (WKU)

(Case T-389/18) ([1])

(EU trade mark — Invalidity proceedings — EU word mark WKU — Earlier EU word marks WKA — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) and Article 60(1)(a) of Regulation (EU) 2017/1001 — No limitation in consequence of acquiescence — Article 61(1) of Regulation 2017/1001)

(2019/C 305/61)

Language of the case: German

Parties

Applicant: Klaus Nonnemacher (Karlsruhe, Germany) (represented by: C. Zierhut, lawyer)

Defendant: European Union Intellectual Property Office (represented by: D. Walicka, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Paul Ingram (Birmingham, United Kingdom) (represented by: A. Haberl, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 17 April 2018 (Case R 399/2017-1), relating to invalidity proceedings between Mr Ingram and Mr Nonnemacher.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Klaus Nonnemacher to pay the costs.*

([1]) OJ C 285, 13.8.2018.

Judgment of the General Court of 20 June 2019 — Nonnemacher v EUIPO — Ingram (WKU WORLD KICKBOXING AND KARATE UNION)

(Case T-390/18) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark WKU WORLD KICKBOXING AND KARATE UNION — Earlier EU word marks WKA — Ground for refusal — Likelihood of confusion — Article 8(1)(b) and Article 60(1)(a) of Regulation (EU) 2017/1001 — No limitation in consequence of acquiescence — Article 61(1) of Regulation 2017/1001)

(2019/C 305/62)

Language of the case: German

Parties

Applicant: Klaus Nonnemacher (Karlsruhe, Germany) (represented by: C. Zierhut, lawyer)

Defendant: European Union Intellectual Property Office (represented by: D. Walicka, Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Paul Ingram (Birmingham, United Kingdom) (represented by: A. Haberl, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 17 April 2018 (Case R 409/2017-1), relating to invalidity proceedings between Ingram and Nonnemacher.

Operative part of the judgment

1. *The action is dismissed.*

2. *Klaus Nonnemacher is ordered to pay the costs.*

([1]) OJ C 285, 13.8.2018.

Judgment of the General Court of 12 July 2019 — mobile.de v EUIPO — Droujestvo S Ogranichena Otgovornost 'Rezon' (mobile.ro)

(Case T-412/18) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark mobile.ro — Earlier national figurative mark mobile — Genuine use of the earlier mark — Article 18 of Regulation (EU) 2017/1001 — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation 2017/1001)

(2019/C 305/63)

Language of the case: English

Parties

Applicant: mobile.de GmbH (Dreilinden, Germany) (represented by: T. Lührig, lawyer)

Defendant: European Union Intellectual Property Office (represented by: J. Crespo Carrillo and H. O'Neill, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Droujestvo S Ogranichena Otgovornost 'Rezon' (Sofia, Bulgaria) (represented by: M. Yordanova-Harizanova and V. Grigorova, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 29 March 2018 (Case R 111/2015-1), relating to invalidity proceedings between Droujestvo S Ogranichena Otgovornost 'Rezon' and mobile.de.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders mobile.de GmbH to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO) and by Droujestvo S Ogranichena Otgovornost 'Rezon'.*

([1]) OJ C 294, 20.8.2018.

Judgment of the General Court of 12 July 2019 — Audimas v EUIPO — Audi (AUDIMAS)

(Case T-467/18) ([1])

(EU trade mark — Opposition proceedings — International registration designating the European Union — Figurative mark AUDIMAS — Earlier EU word mark AUDI — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2019/C 305/64)

Language of the case: German

Parties

Applicant: Audimas AB (Kaunas, Lithuania) (represented by G. Domkutė-Lukauskienė, lawyer)

Defendant: European Union Intellectual Property Office (represented by D. Walicka, acting as Agent)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 22 May 2018 (Case R 2425/2017-2) relating to opposition proceedings between Audi and Audimas.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Audimas AB to pay the costs.*

(1) OJ C 341, 24.9.2018.

Judgment of the General Court of 26 June 2019 — Balani Balani and Others v EUIPO — Play Hawkers (HAWKERS)

(Case T-651/18) (1)

(EU trade mark — Opposition proceedings — Application for EU figurative mark HAWKERS — Earlier EU figurative mark HAWKERS — Relative ground for refusal — Article 8(5) of Regulation (EU) 2017/1001)

(2019/C 305/65)

Language of the case: Spanish

Parties

Applicants: Sonu Gangaram Balani Balani (Las Palmas de Gran Canaria, Spain), Anup Suresh Balani Shivdasani (Las Palmas de Gran Canaria) and Amrit Suresh Balani Shivdasani (Las Palmas de Gran Canaria) (represented by: A. Díaz Marrero, lawyer)

Defendant: European Union Intellectual Property Office (represented by: J. Crespo Carrillo and H. O'Neill, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO: Play Hawkers, SL (Elche, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 2 August 2018 (Case R 396/2018-2), relating to opposition proceedings between Play Hawkers, on the one side, and Mr Balani Balani, Mr Balani Shivdasani and Mr Balani Shivdasani, on the other side.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Sonu Gangaram Balani Balani, Anup Suresh Balani Shivdasani and Amrit Suresh Balani Shivdasani to pay the costs.*

(1) OJ C 4, 7.1.2019.

Action brought on 15 June 2019 — UI v Commission

(Case T-362/19)

(2019/C 305/66)

Language of the case: English

Parties

Applicant: UI (represented by: J. Diaz Cordova, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of 27 August 2018 of the European Commission's Paymaster's Office by which the applicant was not given the benefit of the expatriation allowance;

— decide as statutory on the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law.

1. First plea in law, alleging, in accordance with paragraph 48 of the judgment of 14 December 1995 in *Diamantaras* v *Commission* (Case T-72/94, EU:T:1995:212), and with paragraph 57 of the judgment of 9 March 2010 in *Tzvetanova* v *Commission* (Case F-33/09, EU:F:2010:18), that the applicant did not have his main occupation/habitual residence in Belgium for the totality of the reference period. Therefore, he is entitled to the full expatriation allowance.

2. Second plea in law, alleging, in accordance with the order of 26 September 2007 in *Rocío Salvador Roldán* v *Commission* (Case F-129/06, EU:F:2007:166), that registering a company or buying real estate in a country is a clear indicator for proving lasting ties to that country (in the present case Romania). Given that this is his case, the applicant is entitled to the full expatriation allowance.

3. Third plea in law, alleging, in accordance with the abovementioned judgment in Case F-33/09 *Tzvetanova* v *Commission*, that the information from the Belgian commune relied on by the defendant in its reply is only formal and cannot be used in establishing the habitual residence of a person. Therefore, the applicant is entitled to the full expatriation allowance.

4. Fourth plea in law, alleging, in accordance with paragraphs 32 and 33 of the judgment of 24 April 2001 in *Miranda* v *Commission* (Case T-37/99, EU:T:2001:122), with the *Del Vaglio* case-law (case-law culminating in order of 12 October 2004 in *Del Vaglio* v *Commission*, Case C-352/03 P EU:C:2004:613) and with the judgment of 15 March 2011 in *Gaëtan Barthélémy Maxence Mioni* v *European Commission* (Case F-28/10, EU:F:2011:23), that the applicant's intention of conferring a lasting character on the centre of his interests, such as to fix his habitual residence, was not linked to Belgium, given that he, inter alia, gave a 'Limosa declaration' during his reference period. He is therefore entitled to the full expatriation allowance. He draws attention to the fact that the defendant in its reply wrongly focuses only on the applicant's physical presence in Belgium.

Action brought on 9 July 2019 — BASF v Commission

(Case T-472/19)

(2019/C 305/67)

Language of the case: English

Parties

Applicant: BASF AS (Oslo, Norway) (represented by: E. Wright, Barrister-at-law, A. Rusanov and H. Boland, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, in its entirety, or insofar as it affects the applicant, Commission Implementing Decision C(2019) 4336 final of 6 June 2019 concerning, in the framework of Article 31 of Directive 2001/83/EC of the European Parliament and of the Council, the marketing authorisations of medicinal products for human use containing 'Omega-3 acid ethyl esters' for oral use in secondary prevention after myocardial infarction;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law.

1. First plea in law, alleging that the contested decision has no valid legal basis.

   — The applicant argues that, by adopting the contested decision, the European Commission failed to respect and fulfil the obligations imposed on the institution by Article 116 of Directive 2001/83/EC; [1]

   — More specifically, the applicant states that the defendant failed to demonstrate that the medicinal product Omacor is harmful, lacks therapeutic efficacy, that the risk-benefit balance is not favourable, or that its qualitative and quantitative composition is not as declared;

   — The contested decision, it is further argued, disregards the principle established by the case-law of the Court of Justice that the favourable risk-benefit balance and efficacy of Omacor are presumed and that it is for the European Commission to demonstrate that the available clinical data supports the reversal of this presumption.

2. Second plea in law, alleging that, by adopting the contested decision, the defendant disregarded the general principle of proportionality under EU law.

   — It is argued again, under this plea, that the defendant failed to demonstrate that Omacor lacks therapeutic efficacy or that the risk-benefit balance of Omacor is no longer favourable. Moreover, the applicant maintains that the contested decision manifestly fails to respect the principle of proportionality;

   — Even if, *quod non*, there had been substantiated concerns regarding the efficacy or risk-benefit balance of Omacor, the defendant would have been required to consider measures that could address these concerns and which are less restrictive than the contested decision.

[1] Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67).

Action brought on 5 July 2019 — NRW. Bank v SRB

(Case T-478/19)

(2019/C 305/68)

Language of the case: German

Parties

Applicant: NRW. Bank (Düsseldorf, Germany) (represented by: D. Flore and J. Seitz, lawyers)

Defendant: Single Resolution Board (SRB)

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 16 April 2019, including the annex thereto, on the calculation of the *ex ante* contributions to the Single Resolution Fund for 2019 and the calculation details, in so far as they concern the applicant with the institution identification number DE05740;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

The action is brought against the Single Resolution Board's decision of 16 April 2019 (SRB/ES/SRF/2019/10), including the annex thereto, on the calculation of the *ex ante* contributions to the Single Resolution Fund for 2019 and the calculation details, in so far as they concern the applicant with the institution identification number DE05740.

In support of the action, the applicant invokes five pleas in law.

1. First plea, alleging that the contested decision should be annulled in the absence of an adequate statement of reasons

   — The applicant claims that, under the second paragraph of Article 263 TFEU, the contested decision should be annulled simply because the defendant infringed essential formal requirements when it adopted the contested decision. The contested decision lacks an adequate statement of reasons, which is, however, mandatorily required under the second paragraph of Article 296 TFEU.

2. Second plea, alleging that the contested decision infringes Delegated Regulation (EU) 2015/63, ([1]) which is to be interpreted in the light of higher-ranking law

   — The applicant claims in this regard that it follows from the required interpretation of Delegated Regulation (EU) 2015/63 in the light of Directive 2014/59/EU ([2]) and of Regulation (EU) No 806/2014 ([3]) that the defendant's setting of contributions necessarily has to be oriented towards the risk profile, something which was not done properly by the defendant. Moreover, the defendant must, when interpreting Delegated Regulation (EU) 2015/63, have regard for the objective set out in Directive 2014/59/EU and in Regulation (EU) No 806/2014 of protecting public budgets, which the defendant did not do. The contested decision also infringes the general principle of equality. Furthermore, the defendant's application of the calculation methodology in the case of internet bank loans is contrary to Delegated Regulation (EU) 2015/63 and Regulation (EU) No 806/2014.

3. Third plea, alleging, in the alternative, that Article 5(1)(f) of Delegated Regulation (EU) 2015/63 infringes higher-ranking law

— The applicant submits that, should an interpretation of Article 5(1)(f) of Delegated Regulation (EU) 2015/63 that is consistent with higher-ranking law, that is to say, with Regulation (EU) No 806/2014, Directive 2014/59/EU and the general principle of equality, not be possible, Article 5(1)(f) of Delegation Regulation (EU) 2015/63 infringes higher-ranking law, is unlawful and should not have been applied by the defendant.

4. Fourth plea, alleging, in the alternative, that the calculation methodology in Delegated Regulation (EU) 2015/63 infringes higher-ranking law

— The applicant claims that, should the defendant have applied the calculation methodology in accordance with Delegated Regulation (EU) 2015/63, the calculation methodology set out in Delegated Regulation (EU) 2015/63 itself infringes higher-ranking law. The calculation methodology in Delegated Regulation (EU) 2015/63 does not meet the requirements of the general principle of equality or the mandatorily required orientation towards the risk profile under Regulation (EU) No 806/2014 and Directive 2014/59/EU.

5. Fifth plea, alleging that the contested decision infringes Article 8(2) of Implementing Regulation (EU) 2015/81 ([4])

— By the fifth plea, the applicant submits that, on the basis of Article 8(2) of Implementing Regulation (EU) 2015/81, the defendant should have deducted the entire outstanding amount of the contribution paid by the applicant in 2015 and already transferred into the Single Resolution Fund (SRF), in view of the fact that the applicant now falls outside the scope of application of Regulation (EU) No 806/2014.

([1]) Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to *ex ante* contributions to resolution financing arrangements (OJ 2015 L 11, p. 44).
([2]) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012 of the European Parliament and of the Council (OJ 2014 L 173, p. 190).
([3]) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1).
([4]) Council Implementing Regulation (EU) 2015/81 of 19 December 2014 specifying uniform conditions of application of Regulation (EU) No 806/2014 of the European Parliament and of the Council with regard to *ex ante* contributions to the Single Resolution Fund (OJ 2015 L 15, p. 1).

Action brought on 8 July 2019 — Hypo Vorarlberg Bank v SRB

(Case T-479/19)

(2019/C 305/69)

Language of the case: German

Parties

Applicant: Hypo Vorarlberg Bank AG (Bregenz, Austria) (represented by: G. Eisenberger and A. Brenneis, lawyers)

Defendant: Single Resolution Board (SRB)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Single Resolution Board of 16 April 2019 on the calculation of the 2019 *ex ante* contributions to the Single Resolution Fund (SRB/ES/SRF/2019/10), including the annex thereto, in any event in so far as the contested decision, including the annex thereto, concerns the contribution to be paid by the applicant; and

— order the Single Resolution Board to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law.

1. First plea, alleging infringement of essential procedural requirements owing to incomplete notification of the contested decision

   — The contested decision was not fully notified to the applicant in breach of Article 1(2) TEU, Articles 15, 296 and 298 TFEU and Articles 42 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter'). Knowledge of the non-notified details, as an essential element of the decision, is necessary in order to make it possible to understand and review the calculations of the contributions.

2. Second plea, alleging infringement of essential procedural requirements owing to a failure to state sufficient reasons for the contested decision

   — The contested decision fails to fulfil the obligation to state reasons under the second paragraph of Article 296 TFEU and Article 41(1) and (2)(c) of the Charter, on the ground that neither the bases nor the details of the calculations were disclosed. As regards the defendant's discretionary powers, it has not been stated which valuations were carried out by the defendant on which grounds.

3. Third plea, alleging infringement of essential procedural requirements owing to the absence of a hearing and the failure to respect the right to be heard

   — The applicant's right to be heard was not respected, in breach of Article 41(1) and (2)(a) of the Charter, prior to the adoption of the contested decision or prior to the issuance of the contribution notice based on that decision.

4. Fourth plea, alleging that Delegated Regulation (EU) 2015/63 ([1]) is unlawful as a basis for the contested decision

   — In the context of the fourth plea, the applicant submits that Articles 4 to 7 and 9 of, as well as Annex I to, Delegated Regulation 2015/63 — provisions which form the basis for the contested decision — establish an opaque system for the setting of contributions, which is contrary to Articles 16, 17 and 47 of the Charter and pursuant to which compliance with Articles 20 and 21 of the Charter and observance of the principles of proportionality and legal certainty are not ensured. The present plea is also raised, in the alternative, in relation to those provisions of Directive 2014/59/EU ([2]) and of Regulation (EU) No 806/2014 ([3]) which mandatorily require the system of contributions implemented by Delegated Regulation 2015/63 — a system which, in the applicant's view, is incompatible with the cited fundamental rights and fundamental values of EU law.

([1]) Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to *ex ante* contributions to resolution financing arrangements (OJ 2015 L 11, p. 44).

([2]) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ 2014 L 173, p. 190).

([3]) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1).

Action brought on 8 July 2019 — Portigon v SRB

(Case T-481/19)

(2019/C 305/70)

Language of the case: German

Parties

Applicant: Portigon AG (Düsseldorf, Germany) (represented by: D. Bliesener, V. Jungkind and F. Geber, lawyers)

Defendant: Single Resolution Board (SRB)

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 16 April 2019 on the calculation of the *ex ante* contributions to the Single Resolution Fund for 2019 (ref: SRB/ES/SRF/2019/10), in so far as the decision concerns the applicant;

— stay the present proceedings under Article 69(c) and (d) of the Rules of Procedure of the General Court until a final decision is issued in Cases T-365/16, T-420/17 and T-413/18 or until those cases are otherwise brought to a conclusion;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on eight pleas in law.

1. First plea, alleging infringement of the first, second and third subparagraphs of Article 70(2) of Regulation (EU) No 806/2014 ([1]) in conjunction with Article 8(1)(d) of Implementing Regulation (EU) 2015/81, ([2]) Article 103(7) of Directive 2014/59/EU ([3]) and Article 114 TFEU

   — The applicant claims that the defendant was wrong to make the applicant subject to an obligation to pay a contribution, since a mandatory contribution for institutions under resolution is not provided for under Regulation (EU) No 806/2014 and Directive 2014/59/EU. Article 114 TFEU prohibits the levying of contributions on institutions such as the applicant.

   — The legislature was not entitled to base the obligation to pay a contribution on Article 114 TFEU owing to the lack of relevance to the internal market. Harmonised rules governing contributions throughout the European Union neither facilitate the exercise of fundamental freedoms nor remedy appreciable distortions of competition in relation to institutions that withdraw from the market.

   — The applicant claims that the defendant was wrong to make the applicant subject to an obligation to pay a contribution, since the institution has no risk exposure, there is no prospect of the institution entering into resolution in accordance with the rules of Regulation (EU) No 806/2014 and the institution is of no importance to the stability of the financial system.

   — The applicant has not engaged in any new business since 2012 and is under resolution as a result of an aid decision taken by the European Commission. It holds the majority of its remaining liabilities on trust for another entity.

   — Delegated Regulation (EU) 2015/63 ([4]) infringes Article 114 TFEU and Article 103(7) of Directive 2014/59/EU as an essential element relating to the calculation of the contribution (second sentence of Article 290(1) TFEU).

2. Second plea, alleging infringement of Article 41(2)(c) of the Charter of Fundamental Rights of the European Union ('the Charter'), on the ground that the calculation procedure does not allow for a complete statement of reasons for the contested decision. The calculation is inapplicable in so far as it is based on Delegated Regulation (EU) 2015/63.

3. Third plea, alleging infringement of Articles 16 and 20 of the Charter, since, in view of the special situation of the applicant, the contested decision is at variance with the general principle of equality. Furthermore, the contested decision interferes disproportionately with the applicant's freedom to conduct a business.

4. Fourth plea, alleging, in the alternative, infringement of Article 70(2) of Regulation (EU) No 806/2014 in conjunction with Article 103(7) of Directive 2014/59/EU, since the defendant, in calculating the amount of the contribution, should have excluded risk-free liabilities from the relevant liabilities

5. Fifth plea, alleging, in the alternative, infringement of Article 70(6) of Regulation (EU) No 806/2014 in conjunction with Article 5(3) and (4) of Delegated Regulation (EU) 2015/63, since the defendant wrongly calculated the applicant's contribution on the basis of a gross approach with regard to derivative contracts

6. Sixth plea, alleging, in the alternative, infringement of Article 70(6) of Regulation (EU) No 806/2014, in conjunction with Article 6(8)(a) of Delegated Regulation (EU) 2015/63, since the defendant wrongly regarded the applicant as an institution undergoing reorganisation

7. Seventh plea, alleging infringement of Article 41(1) and (2)(a) of the Charter, as the defendant should have heard the applicant prior to the adoption of the contested decision

8. Eighth plea, alleging infringement of Article 41(1) and (2)(c) of the Charter and of the second paragraph of Article 296 TFEU on the ground that the defendant failed to provide an adequate statement of reasons for the contested decision

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(1) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1).

(2) Council Implementing Regulation (EU) 2015/81 of 19 December 2014 specifying uniform conditions of application of Regulation (EU) No 806/2014 of the European Parliament and of the Council with regard to *ex ante* contributions to the Single Resolution Fund (OJ 2015 L 15, p. 1).

(3) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ 2014 L 173, p. 190).

(4) Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to *ex ante* contributions to resolution financing arrangements (OJ 2015 L 11, p. 44).

Action brought on 8 July 2019 — CV and Others v Commission

(Case T-496/19)

(2019/C 305/71)

Language of the case: French

Parties

Applicants: CV, CW and CY (represented by: J.-N. Louis, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the Commission's decision rejecting their request of 4 June 2018;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action seeking the annulment of the Commission's decision rejecting their request for the adoption of measures such as to end the infringement of the principle of equivalence in purchasing power between officials and other members of staff, irrespective of the place of their posting, the applicants rely on three pleas in law.

1. First plea in law, alleging infringement of the obligation to state reasons and of the principle of equivalence in purchasing power between officials, irrespective of their place of posting. In the first place, the applicants submit that the contested decision is vitiated by a failure to state any reasons for it, which prevents them from understanding the justification for that decision and does not allow the General Court to exercise its judicial review. In the second place, the applicants take the view that

they carry out their duties under the same conditions as their colleagues posted at the European Commission Representation in Paris and that they should therefore receive, like those colleagues, a fixed entertainment allowance. Lastly, they take the view that observance of the principle of equivalence in purchasing power is incompatible with the existence of the same weighting for officials posted in Paris, Strasbourg, Marseille and Valenciennes.

2. Second plea in law, alleging infringement of the principle of equal treatment and of non-discrimination, inasmuch as the applicants, unlike their colleagues posted at the European Commission Representation in Paris, do not receive the fixed entertainment allowance, although they carry out their duties under the same conditions as those colleagues.

3. Third plea in law, alleging infringement of the duty of care, which requires the competent authority to state, in the grounds given for the contested decision, the reasons which led it to find that the interest of the service prevailed.

Action brought on 8 July 2019 — CZ and Others v EEAS

(Case T-497/19)

(2019/C 305/72)

Language of the case: French

Parties

Applicants: CZ, DB, DC and DD (represented by: J.-N. Louis, lawyer)

Defendant: European External Action Service

Form of order sought

The applicants claim that the Court should:

— annul the decision of the EEAS rejecting their request of 4 June 2018;

— order the EEAS to pay the costs.

Pleas in law and main arguments

In support of the action seeking the annulment of the decision of the EEAS rejecting their request for the adoption of measures such as to end the infringement of the principle of equivalence in purchasing power between officials and other members of staff, irrespective of the place of their posting, the applicants rely on three pleas in law.

1. First plea in law, alleging infringement of the obligation to state reasons and of the principle of equivalence in purchasing power between officials, irrespective of their place of posting. In the first place, the applicants submit that the contested decision is vitiated by a failure to state any reasons for it, which prevents them from understanding the justification for that decision and does not allow the General Court to exercise its judicial review. In the second place, the applicants take the view that they carry out their duties under the same conditions as their colleagues posted at the European Commission Representation in Paris and that they should therefore receive, like those colleagues, a fixed entertainment allowance. Lastly, they take the view that observance of the principle of equivalence in purchasing power is incompatible with the existence of the same weighting for officials posted in Paris, Strasbourg, Marseille and Valenciennes.

2. Second plea in law, alleging infringement of the principle of equal treatment and of non-discrimination, inasmuch as the applicants, unlike their colleagues posted at the European Commission Representation in Paris, do not receive the fixed entertainment allowance, although they carry out their duties under the same conditions as those colleagues.

3. Third plea in law, alleging infringement of the duty of care, which requires the competent authority to state, in the grounds given for the contested decision, the reasons which led it to find that the interest of the service prevailed.

Action brought on 12 July 2019 — DE v Parliament

(Case T-505/19)

(2019/C 305/73)

Language of the case: English

Parties

Applicant: DE (represented by: T. Oeyen, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the European Parliament's decision of 30 October 2018 refusing to grant the applicant adequate special leave to take care of his twin children newly born via surrogacy.

— order the Parliament to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law.

1. First plea in law, alleging breach of the rights of equal treatment and non-discrimination.

   — By failing to grant the applicant birth leave rights which are equivalent to maternity leave and/or adoption leave, the contested decision violates the applicant's fundamental rights of equal protection and non-discrimination, as enshrined in Article 21(1) of the Charter of Fundamental Rights of the European Union, Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 1(d) of the EU Staff Regulations. As homosexuals are the predominant group of parents making use of surrogacy, they are disproportionately negatively affected by the Parliament's interpretation of the birth leave-related provisions of the EU Staff Regulations as reflected in the contested decision.

2. Second plea in law, alleging breach of the right to protection of the applicant's family life.

   — By failing to grant the applicant adequate special leave to take care of his newly born children, equivalent to maternity and/or adoption leave, the contested decision violates Article 8 ECHR, which protects the applicant's right to family life, read in conjunction with Article 14 ECHR.

3. Third plea in law, alleging that the contested decision was taken in breach of the principle of good administration.

   — In particular, it is alleged that the defendant (i) failed to grant the applicant the right to be heard; and (ii) failed to give adequate reasons for its decision.

4. Fourth plea in law, a plea of illegality relating to the special leave provisions of the EU Staff Regulations as interpreted by the defendant in the contested decision.

   — For the same reasons as set forth in the first to third pleas above, it is argued that the defendant's interpretation of Article 57 of the Staff Regulations, read in conjunction with Article 6 of Annex V to those Regulations, as reflected in the contested decision, to the effect that officials or other servants of the European Parliament who become parents of a child via surrogacy are not entitled to special leave equivalent to maternity and/or adoption leave, is illegal.

5. Fifth plea in law, alleging an error in law and misapplication of Article 6 of Annex 2 to the EU Staff Regulations and of the European Parliament's Internal Rules governing leave.

   — In the event that the Court holds that the applicant is not entitled to birth leave equivalent to that which is granted as maternity leave or adoption leave, the applicant submits that, as the father of twins, he is entitled to 20 days' leave. This entitlement applies regardless of the legal mechanism through which the applicant gained parental responsibility.

Action brought on 19 July 2019 — Lego v EUIPO — Delta Sport Handelskontor (Building blocks from a toy building set)

(Case T-515/19)

(2019/C 305/74)

Language of the case: English

Parties

Applicant: Lego A/S (Billund, Denmark) (represented by: V. von Bomhard and J. Fuhrmann, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Delta Sport Handelskontor GmbH (Hamburg, Germany)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Applicant before the General Court

Design at issue: Registered Community design No 1664 368-0006

Contested decision: Decision of the Third Board of Appeal of EUIPO of 10 April 2019 in Case R 31/2018-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— maintain the decision of the Design Invalidity Division of EUIPO of 30 October 2017 rejecting the application for declaration of invalidity of the registered Community design No 1664 368-0006;

— order EUIPO and, if the other party to the proceedings before EUIPO intervenes, the intervener, to bear the costs of the proceedings.

Pleas in law

— Infringement of Article 8(3) of Council Regulation (EC) No 6/2002;

— Infringement of Article 8(1) of Council Regulation (EC) No 6/2002;

— Infringement of Article 62 of Council Regulation (EC) No 6/2002.

Action brought on 22 July 2019 — Sipcam Oxon v Commission

(Case T-518/19)

(2019/C 305/75)

Language of the case: English

Parties

Applicant: Sipcam Oxon SpA (Milano, Italy) (represented by: C. Mereu, P. Sellar, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the application admissible and well-founded;

— annul the contested Commission Implementing Regulation (EU) 2019/677 of 29 April 2019;

— order the defendant to pay all the costs and expenses of these proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law.

1. First plea in law, alleging that the contested Regulation was adopted further to manifest errors of assessment.

2. Second plea in law, alleging that the contested Regulation results from a procedure during which the applicant's rights of defence have not been respected.

3. Third plea in law, alleging that the contested Regulation was adopted in breach of the principle of legal certainty because of the incorrect application of guidelines.

4. Fourth plea in law, alleging that the contested Regulation was adopted in breach of the principle of proportionality.

5. Fifth plea in law, alleging that the contested Regulation wad adopted in breach of the precautionary principle.

Action brought on 22 July 2019 — Forte v Parliament

(Case T-519/19)

(2019/C 305/76)

Language of the case: Italian

Parties

Applicant: Mario Forte (Naples, Italy) (represented by: C. Forte and G. Forte, lawyers)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— Primarily, annul the contested act;

— Primarily, annul every previous and subsequent preparatory act connected to the contested act which has legal effects in regard to the applicant;

— Order the European Parliament to pay the costs of the proceedings.

Pleas in law and main arguments

The present action has been brought against European Parliament Decision D (2019) 20777, signed by Mr Sune Hansen, Head of the Members' Salaries and Social Entitlements Unit, Directorate for financial and social entitlements, Directorate-General for Finance of the European Parliament, revising retirement pension rights following the entry into force on 1 January 2019 of Resolution No 14/2018 of the Office of the Italian Chamber of Deputies and ordering recovery of the amounts unduly paid out.

The pleas in law and main arguments are similar to those relied on in Cases T-345/19, *Santini* v *Parliament*; T-347/19, *Falqui* v *Parliament* and T-389/19, *Coppo Gavazzi* v *Parliament*.

The applicant claims, in particular, that the reasoning for the contested decision is illogical; that there was no evaluation of the lawfulness of Resolution No 14/2018 in relation to the general EU-law principles of reasonableness, proportionality, certainty, predictability, legitimate expectations and the protection of acquired rights; infringement of Article 6 TEU; infringement of the Implementing Measures for the Statute for Members of the European Parliament; infringement of the Financial Regulation; failure to observe the principles of equality and non-retroactivity of legal rules; and failure to observe the principle of access to protection and justice.

Action brought on 19 July 2019 –Haswani v Council

(Case T-521/19)

(2019/C 305/77)

Language of the case: French

Parties

Applicant: George Haswani (Yabroud, Syria) (represented by: G. Karouni, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2016/850 of 27 May 2016 amending Decision 2013/255/CFSP concerning restrictive measures against Syria;

— annul Council Implementing Regulation (EU) 2016/840 of 27 May 2016 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria;

— annul Council Decision (CFSP) 2017/917 of 29 May 2017 amending Decision 2013/255/CFSP concerning restrictive measures against Syria;

— annul Council Implementing Regulation (EU) 2017/907 of 29 May 2017 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria;

— annul Council Implementing Decision (CFSP) 2017/1245 of 10 July 2017 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria;

— annul Council Implementing Regulation (EU) 2017/1241 of 10 July 2017 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria;

— annul Council Decision (CFSP) 2018/778 of 28 May 2018 amending Decision 2013/255/CFSP concerning restrictive measures against Syria;

— annul Council Implementing Regulation (EU) 2018/774 of 28 May 2018 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria;

— annul Council Decision (CFSP) 2019/806 of 17 May 2019 amending Decision 2013/255/CFSP concerning restrictive measures against Syria;

— annul Council Implementing Regulation (EU) 2019/798 of 17 May 2019 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria;

— consequently,

  — order the removal of Mr George Haswani's name from the annexes to the abovementioned acts;

  — order the Council to pay the sum of EUR 100 000 in respect of the non-pecuniary damage suffered by the applicant;

  — order the Council to bear its own costs and to pay those incurred by the applicant, evidence in support of which will be disclosed in the course of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law.

1. First plea in law, alleging breach of the obligation to state reasons flowing from the second paragraph of Article 296 TFEU. The applicant criticises the Council of the European Union on the ground that it merely set out vague and general considerations and failed to state specific and concrete reasons for its view, in the exercise of its discretionary assessment, that the applicant must be subjected to the restrictive measures at issue. Thus, the Council raised no specific and objective factor against the applicant which could justify the measures at issue.

2. Second plea in law, alleging infringement of the principle of proportionality in the interference with fundamental rights. The applicant maintains that the disputed measure must be invalidated inasmuch as it is disproportionate in the light of the objective stated and constitutes excessive interference in the freedom to conduct business and the right to property, enshrined in Articles 16 and 17 respectively of the Charter of Fundamental Rights of the European Union. The disproportion arises from the fact that the measure covers all influential economic activity without any other criterion.

3. Third plea in law, alleging a manifest error of assessment and a lack of evidence. According to settled case-law, the effectiveness of the judicial review, guaranteed by Article 47 of the Charter, requires, inter alia, that, as part of the review of the lawfulness of the grounds which form the basis of the decision to list or to maintain the listing of a given person on the lists of persons subject to the sanctions, the Courts of the European Union must ensure that that decision is taken on a sufficiently solid factual basis. In the applicant's view, the Council's allegations concerning both the 'close ties with the regime' and a supposed role as an intermediary in oil transactions between the regime and ISIL, must be definitively rejected on the ground that they are entirely unfounded and lack any factual basis to substantiate them.

4. Fourth plea in law, concerning the claim for compensation, in that the imputation of certain serious unproven matters places the applicant and his family in danger, a fact which illustrates the extent of the loss suffered justifying his claim for compensation.

Action brought on 23 July 2019 — Aldi v EUIPO (BBQ BARBECUE SEASON)

(Case T-522/19)

(2019/C 305/78)

Language of the case: German

Parties

Applicant: Aldi GmbH & Co. KG (Mülheim an der Ruhr, Germany) (represented by: N. Lützenrath, U. Rademacher, C. Fürsen and M. Minkner, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for EU figurative mark BBQ BARBECUE SEASON in black, grey, white, orange, light orange and dark orange — Application for registration No 17 879 203

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 17 May 2019 in Case R 1359/2018-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 7(1)(c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 23 July 2019 — Sky v EUIPO — Safran Electronics & Defense (SKYNAUTE by SAGEM)

(Case T-523/19)

(2019/C 305/79)

Language of the case: English

Parties

Applicant: Sky Ltd (Isleworth, United Kingdom) (represented by: A. Zalewska, lawyer, and A. Brackenbury, Solicitor)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Safran Electronics & Defense (Boulogne-Billancourt, France)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: Application for European Union word mark SKYNAUTE by SAGEM — Application for registration No 14 821 334

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 23 May 2019 in Case R 919/2018-4

Form of order sought

The applicant claims that the Court should:

— uphold the applicant's application;

— annul the contested decision;

— order EUIPO to pay the applicant's costs of this application and the proceedings before the Office.

Pleas in law

— Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 8(2)(c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council,

— Infringement of Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council,

— Infringement of Article 8(4) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 25 July 2019 — Nord Stream 2 v Parlement and Conseil

(Case T-526/19)

(2019/C 305/80)

Language of the case: English

Parties

Applicant: Nord Stream 2 AG (Zug, Suisse) (represented by: L. Van den Hende, J. Penz, lawyers and M. Schonberg, Solicitor)

Defendants: European Parliament and Council of the European Union

Form of order sought

The applicants claim that the Court should:

— order the annulment of Directive (EU) 2019/692 of the European Parliament and of the Council of 17 April 2019 in its entirety;

— order the defendants to pay the applicant's costs in these proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on six pleas in law.

1. First plea in law, alleging infringement of the general EU law principle of equal treatment as the amending Directive leaves the applicant without the prospect of derogation from the application of the rules of Directive 2009/73/EC [1], notwithstanding the sheer magnitude of investment that had already been incurred as at the date of adoption of the amending Directive and even before it was first proposed, whereas all other existing offshore import pipelines are eligible for derogation.

2. Second plea in law, alleging infringement of the general EU law principle of proportionality as the amending Directive is incapable of achieving its stated objectives and cannot, in any event, make a sufficiently meaningful contribution to those objectives that outweigh the burdens it imposes.

3. Third plea in law, alleging infringement of the general EU law principle of legal certainty as the amending Directive fails to incorporate appropriate adaptations with respect to the particular situation of the Applicant, but on the contrary, is specifically designed to impact it negatively.

4. Fourth plea in law, alleging misuse of powers, as the Amending Directive was adopted for a purpose other than those purposes for which the powers used to pass it were conferred.

5. Firth plea in law, alleging breach of essential procedural requirements, as the Amending Directive was adopted in breach of requirements imposed under Protocol No 1 to the TEU and TFEU on the Role of National Parliaments in the European Union, Protocol No 2 to the TEU and TFEU on the Application of the Principles of Subsidiarity and Proportionality, and the Interinstitutional Agreement on Better Law-Making.

6. Sixth plea in law, alleging failure to state reasons as required by Article 296 TFEU.

[1] Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, OJ L 211, 14.8.2009, p. 94–136.

Action brought on 24 July 2019 — Arranz de Miguel and Others v ECB and SRB

(Case T-528/19)

(2019/C 305/81)

Language of the case: Spanish

Parties

Applicants: Ricardo Arranz de Miguel (Madrid, Spain), Alejandro Arranz Padierna de Villapadierna (Madrid), Felipe Arranz Padierna de Villapadierna (Madrid), Ricardo Arranz Padierna de Villapadierna (Madrid), Nicolás Arranz Padierna de Villapadierna (Madrid) (represented by: R. Pelayo Jiménez and A. Muñoz Aranguren, lawyers)

Defendants: European Central Bank and Single Resolution Board

Form of order sought

The applicants claim that the General Court should:

— Declare that the ECB and the SRB have incurred non-contractual liability as a result of the infringements specified in the application and order them to pay compensation to the applicants for the damage caused, valued at the asset value of their shares, or in the alternative, order the defendant institutions to pay compensation equivalent to EUR 0.8442 per share.

— Increase the amount due with compensatory interest calculated, at a rate equivalent to the annual inflation rate stated by EUROSTAT in relation to Spain, as of 6 June 2017 until the date of delivery of the judgment, plus default interest as of the date of the judgment awarding compensation for the damage suffered until actual payment.

— Order the defendant institutions to pay the costs of the proceedings.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those raised in Case T-659/17, *Vallina Fonseca* v *Single Resolution Board* (OJ 2017 C 424, p.42).

As regards the European Central Bank, the applicants claim, inter alia, infringement of the principle of legitimate expectations and breach of the obligation of due diligence and good administration.

ISSN 1977-091X (electronic edition)
ISSN 1725-2423 (paper edition)

Publications Office of the European Union
L-2985 Luxembourg
LUXEMBOURG

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